

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.66/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Sahyog Homes Ltd. 321, Morya Estate, New Link Road Opp. Infinity Mall, Andheri (W), Mumbai – 400 053	बनाम/ Vs.	DCIT-Cir. 6(2) 1903, 19 th Floor, Air India Building Nariman Point Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AANCS-8142-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Nirav Mehta-Ld. AR
Revenue by	:	Shri T.S. Khalsa- Ld. Sr.DR
सुनवाई की तारीख/ Date of Hearing	:	14/01/2021
घोषणा की तारीख / Date of Pronouncement	:	25/01/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. In the captioned appeal for Assessment Year (AY) 2015-16, the assessee is aggrieved by confirmation of interest disallowance u/s 40(a)(ia) for Rs.56.61 Lacs. The assessment was framed by Ld. Assessing Officer u/s 143(3) r.w.s. 147 on 15/12/2017 wherein the aforesaid disallowance was made. Upon further appeal, Ld. Commissioner of Income Tax (Appeals)-54, Mumbai [CIT(A)] vide order dated 29/10/2018 confirmed the stand of Ld. AO. Aggrieved,

the assessee is in further appeal before us. The assessee is stated to be engaged in building construction and development.

2. The impugned disallowance stem from the fact that the assessee paid compensation of Rs.56.61 Lacs to 5 parties against cancellation of flats. The details of the same have been tabulated in para 7.1 of the impugned order. The Ld.AO opined that compensation on cancellation of booking would partake the character of interest payment covered u/s 194A and therefore, the same would require deduction of tax at source. Since the assessee had not deducted tax at source on stated payments, the aforesaid amount was disallowed in terms of provisions of Sec. 40(a)(ia).

3.1 Before Ld. CIT(A), the assessee pleaded that the payments were in the form of compensation on cancellation of flats on the basis of mutual understanding between the clients and the assessee. The allotment letter did not contain any obligation of payment of interest in case of refund. The attention was drawn to the fact the compensation was lumpsum payment and not a period cost. The compensation was not in the nature of interest paid on any amount of money borrowed or debt incurred. There was no debtor-creditor relationship between the assessee and the clients. The payments were merely compensatory in nature and there existed no terms of payment of interest in any manner, in case the allotment letters being revoked. Therefore, the payments would not require deduction of tax at source. In support, reliance was placed on various judicial pronouncements.

3.2 The Ld. CIT(A), upon perusal of allotment letter and cancellation letters, observed that the clauses were different in

each allotment letter. In few case, there was a provision of buy-back and consideration for buy-back was also specifically mentioned. Even the buy- back provisions were not implemented in case of two payees i.e. G.S. Reality Ltd. & Nupur K. Garg. There was no provision of buy-back in other three cases but the purchasers were liable for interest on delayed payment @24% per annum. In other words, the assessee was charging interest of 24% in case of delayed payment by purchasers. However, in all case there was no provision for payment of any compensation to the purchaser in the event of cancellation of allotment letters. Further in all cases, the purchasers had requested for cancellation of flats and therefore the assessee was under no obligation to pay any compensation. The assessee returned the booking amount along with additional amount which would be nothing but interest on the amount kept with him. There was no other way this payment could be interpreted because the assessee was under no legal obligation to pay compensation for cancellation of flat, the proposal for which came from the purchaser. The argument that there exists no debtor-creditor relationship was negated by observing that once the relationship ends due to cancellation of booking, the relationship of the buyer / seller ends and the debtor-creditor relationship commences. As the relationship of buyer-seller snapped, the assessee was liable to refund the amount to the purchasers and any mutually decided amount paid to the purchasers would be in the nature of interest paid by the builder to the purchaser for keeping the booking amount with him for the aforesaid period.

Therefore, the action of the Ld. AO in making disallowance was to be upheld. Aggrieved, the assessee is in further appeal before us.

4. Upon careful consideration of factual matrix as enumerated in preceding paragraphs and after going through the impugned order, we find that Ld. CIT(A) has clinched the issue in the correct perspective and passed a judicial and reasoned order. We concur with the adjudication of Ld. CIT(A) since various arguments raised by the assessee have appropriately been dealt therein. It could be observed that as per allotment letters, there was no provision for payment of any compensation to the purchasers in the event of cancellation of allotment. The bookings were cancelled at the behest of purchasers and the assessee was under no obligation to pay any compensation in such an event. The payment was made as per mutual understanding. It is pertinent to note that the assessee was charging interest of 24% on delayed payments and therefore, the excess amount paid over and above the advances paid by the purchasers would be nothing but compensatory interest in nature. The buyer-seller relationship was snapped the moment the bookings were cancelled and the relationship of debtor-creditor would commence. As rightly held by Ld. CIT(A), there was no other way this payment could be interpreted because the assessee was under no legal obligation to pay compensation for cancellation of flat, the proposal for which came from the purchaser. Therefore, the impugned order would not require any interference on our part, in this regard. The said adjudication is also supported by assessment order for AY 2017-18 as placed on record by Ld. DR the perusal of

which would reveal that the assessee, itself, has deducted tax at source on such excess payments during that year.

5. Having said so, we find that the assessee could escape the rigors of Sec.40(a)(ia) in terms of second proviso to Section 40(a)(ia) read with first proviso to sub-section (1) of Section 201 by demonstrating that the payees have duly offered this income in their respective tax returns and paid due taxes thereon. In such a case, no disallowance u/s 40(a)(ia) is called for. Therefore, we deem it fit to restore the matter back to the file of AO for the limited purpose of providing an opportunity to the assessee to demonstrate fulfillment of these conditions by adducing requisite documentary evidences. The Ld. AO is directed to consider the same and grant the said benefit to the assessee, if otherwise available and found in order. The ground stand allowed to that limited extent.

6. Finally, the appeal stands partly allowed for statistical purposes in terms of our above order.

Order pronounced on 25th January, 2021

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/01/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.