

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 687/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Ghanekar Constructions Pvt. Ltd.
502, Megh Apartments, Lane No.4,
Prabhat Road, Pune-411 004.
PAN : AAACG2424K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 1(4), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V. Jayraman

Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 28.01.2021

घोषणा की तारीख / Date of Pronouncement : 29.01.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-1, Pune dated 14.12.2016 for the assessment year 2013-14
as per the following grounds of appeal on record :

*"1. On the facts and in the circumstances of the case, the CIT(A)-1, Pune
has erred in confirming the additions made of Rs.64,80,000/- being*

disputed income not realized even today worked out by the Assessing Officer.

2. The order of the CIT(A)-1, Pune may be vacated and additions made by the ITO, Ward-1(4) of Rs.64,80,000/- be deleted.

3. The appellant craves leave to add, amend, alter or delete any one or more of the grounds of appeal as may be required in the nature and circumstances of the case.”

2. The only grievance of the assessee in the grounds of appeal is with regard to the addition made by the Assessing Officer of Rs.64,80,000/- being disputed income not realized.

3. In this appeal additions made of Rs.64,80,000/- u/s.145(2) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) for unrealized disputed rent. This issue has been discussed in Para 4 of the assessment order. The Assessing Officer during the course of assessment proceedings noticed that the assessee had rented its commercial building to the International Institute of Planning Management for Rs.10,00,000/- per month for the period April, 2012 to June, 2012 and for the period from July, 2012 to March, 2013 for an amount of Rs.11,00,000/- per month. The Assessing Officer however, on perusal of the profit and loss account observed that the assessee had shown rent receipts only to the extent of Rs.64,20,000/- as against Rs.1,29,00,000/- (April, 2012 to June, 2012, Rs.10,00,000 x 3 = Rs.30,00,000/- and for July, 2012 to March, 2013, Rs.11,00,000/- x 9= Rs.99,00,000/-, Total Rs.1,29,00,000/-) and thus, there was difference of Rs.64,80,000/-. The Assessing Officer confronted the assessee on this issue and the assessee had submitted its reply which is on record. The relevant part of the submission is extracted herein below:

“4. In schedule 10 to the accounts of the company Major Accounting policies adopted by the company has been explained. In clause (a) the Company states that “the company adopts the accrual concept in the preparation of the accounts except rent receipt which has been taken on cash basis as the balance amount is disputed. “The assessee company

has already submitted all relevant papers of the dispute i.e. copy of the notice, Court decree and so on in the earlier hearing to show that the balance amount is disputed till date. The company has filed separate suit for the recovery of the said amount. In the light of the said facts company has taken the same on the cash basis and reported accordingly. The Indian Institute of Planning and Management has provided the entire amount in their books without payment and when the matter is sub-judice. In view of the above facts, Assessee Company has taken it on cash basis.”

The Assessing Officer being not convinced with the submissions of the assessee considered rent receipt of Rs.64,80,000/- as assessee's income for the year under consideration and added the same to the total income of the assessee.

4. During the Appellate Proceedings before the Ld. CIT(Appeals), a detailed written submissions were placed on record by the assessee. The Ld. CIT(Appeals) vide Para 6 and 7 of his order has decided this case against the assessee and has upheld the findings of the Assessing Officer.

5. At the time of hearing, the Ld. AR of the assessee has placed strong reliance on the decision of the Hon'ble Jurisdictional High Court in the case of **Commissioner of Income Tax Vs. Essar Teleholdings Ltd. reported in 2014 51 Taxmann.com 499 (Bom.)** wherein analyzing the provisions of Section 36(1)(vii) of the Act which provides the conditions precedent for bad debts, it was observed by the Hon'ble High Court that the Tribunal in that case had deleted the disallowance by observing that both the Assessing Officer and the CIT(Appeals) had ignored the amendment which was brought into effect from 01.04.1989 in respect of Section 36(1)(vii) of the Act and that amendment does not require the assessee to establish that the debt written off was bad and all that is required is it being written off as such. The Commissioner as also the Assessing Officer have tried to overcome this legal position by seeking explanation from the assessee, asking for evidences of

such bad debts. The assessee has not given any details or justification on this aspect. It was however observed that certainly such was not a requirement in the given facts and circumstances and therefore, disallowance was deleted by the Tribunal. The Hon'ble High Court held that the Tribunal did not commit any error in recording a factual finding that in the present case bad debts can be written off as irrecoverable.

6. The Chennai Bench of the Tribunal in the case of **Newdeal Finance and Investment Limited Vs. DCIT, 2001 74 ITD 469** had observed that it is for the assessee to decide whether the debt has become bad or not and the Assessing Officer can never insist on production of demonstrative and infallible proof that the debt had become bad.

7. We have perused the case record and heard the rival contentions. We have also considered the judicial pronouncements placed before us. Reverting to the facts of the present case, we find that during the FY 2012-13, the assessee company leased out its premises to International Institute of Planning and Management and the assessee received license fees of Rs.64,20,000/-. However, they have not paid balance amount of Rs.64,80,000/-. The amount was disputed. The matter went to the Court for recovery of possession and license fee in arrears. In the Civil Suit No.376/2013 dated 23.07.2014, the Court passed decree in favour of the assessee company for recovery of arrears of license fees. That however, it is the contention of the assessee that they have still not recovered during the FY 2012-13 relevant to the assessment year 2013-14, the amount of Rs.64,80,000/-and therefore, the assessee has treated the amount as bad debts. The Hon'ble Jurisdictional High Court (supra.) while analyzing Section 36(1)(vii) of the Act has held that it does not require the assessee to establish that the debt written off was bad and all that is required is it being written off

as such. Meaning thereby, no evidence or other things needs to be sought by the Department from the assessee when he is treating such amount as bad debts. The only consideration is that such amount has been treated as bad debts in the books of accounts of the assessee. This is only the requirement to the provision. The Ld. DR also could not place any evidence before us to demonstrate that the amount of Rs.64,80,000/- was already recovered by the assessee. Respectfully, following the view of the Hon'ble Jurisdictional High Court (supra.), we are of the considered opinion that no addition should be sustained in the hands of the assessee on this issue of treatment of amount of Rs.64,80,000/- as bad debts. Therefore, we direct the Assessing Officer to delete the addition from the hands of the assessee.

8. In the result, **appeal of the assessee is allowed.**

Order pronounced on 29th day of January, 2021.

Sd/-
WASEEM AHMED
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th January, 2021.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	28.01.2021	Sr.PS/PS
2	Draft placed before author	28.01.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		