



IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER

ITA no.349/Mum./2019
(Assessment Year : 2015-16)

M/s. Reward Real Estate Co. Ltd.
11/12, Raghuvanshi Mills Compound
Lower Parel, Mumbai 400 013
PAN – AACCR8340K

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-5(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Kailash Kanojiya

Date of Hearing – 23.03.2021

Date of Order – 31.05.2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

The aforesaid appeal has been filed by the assessee challenging the impugned order dated 27th November 2018, passed by the learned Commissioner (Appeals)-53, Mumbai, pertaining to the assessment year 2015-16.

2. The grounds raised by the assessee are reproduced below:-

"1. That the assessment order u/s 143(3) of the Income Tax Act, 1961 ("the Act") dated 28.12.2017 passed by the Assessing Officer ("AO") and the additions / disallowances made therein are

illegal, bad in law and without jurisdiction.

2. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding ad-hoc addition of Rs. 81,40,600/- made wrongly & illegally by the AO by disallowing 10% of the administration expenses without any basis or justification. AO and CIT(A) ought to have appreciated that administration expenses constitute just 13.68% of the turnover of the Appellant and is most reasonable under any circumstance.

3. That the addition & disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are highly excessive.

4. That interest U/s 234B and 234C of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out."

2. Brief facts are, the assessee company is engaged in the business of real estate and construction and is also executing the main projects of its holding company in the name and style of M/s. KSL & Industries Ltd. situated at Nagpur. The said project at Nagpur is known as "Empress City" and the property is developed as a Multi-user Complex including Residential Building Complex, a Shopping Mall, four Multiplexes, Five Star hotel and an Information Technology Park-2. According to the terms of agreement between the assessee and its holding company M/s. KSL & Industries Ltd., the assessee is entitled to receive 5% of the sale value of the "Residential Project" of the entire project as service charges for executing the entire project and the balance 95% amount of sale proceed of housing project will be appropriate towards cost of other project like I.T. Park, Shopping Mall,

Multiplexes and Five Star Hotel as per specifications provided by its holding company. The Assessing Office observed that during the current assessment year, the administrative expenses of ₹ 8,14,06,000, incurred as against in the immediate preceding assessment year the administrative expenses of ₹ 3,29,63,000, was incurred. Hence, in order to verify the same, the Assessing Officer called for the bills, vouchers and ledgers of administrative expenses. However, as stated by the Assessing Officer, the assessee could not produce any of the above details but it submitted voluntarily that some of the expenditures are capital in nature. The assessee submitted that as some of the flats are unsold at the end of the relevant assessment year, expenses attributable to closing stock should have been added to WIP shown by M/s. KSL Industries Ltd. The Assessing Officer, in view of these facts, estimated and made ad-hoc disallowance @ 10% of the total administrative expenses (i.e., 10% of ₹ 8,14,06,000 = ₹ 81,40,600) which was added to the total income of the assessee.

3. The learned Commissioner (Appeals) upheld the disallowance by observing as follows:–

"4.2. I have considered the submissions carefully. It is seen that the income from operations is shown as Rs. 59.46 Crore, against which profit before taxes of Rs. 1.43 Crore has been shown. In the preceding year, the revenue from operations was shown as Rs. 26.55 Crore, against which profit before taxes of Rs. 23.88 Lac has been shown. The opening work-in-progress was shown

at Rs 174.46 Crore which has gone down to Rs. 159.80 Crore. Advance recoverable has gone down from Rs. 15.33 Crore to Rs.13.01 Crore. The Revenue from operations comprises of sale of flats Rs. 57.12 Crore and profit on booking of residential complex Rs. 2.34 Crore. Other administrative expenses as noted by the AO has gone up from Rs. 3.29 Crore to Rs. 8.14 Crore. The major increase is in the head of salaries which is Rs. 2.61 Crore (last year 40 Lac), electricity charges Rs. 2.56 Crore (last year Rs. 1.11 Lac), conveyance and travelling Rs. 56.33 Lac (last year Rs. 16.51 Lac), rent & taxes Rs. 39.73 Lac (last year 11.79 Lac). Thus, there is significant increase in the various expenses claimed. The assessing officer was therefore justified in seeking details of expenses. Since this was not furnished by the assessee, the assessing officer was justified in disallowing expenses.

4.3. I find that the appellant has not filed any evidence to support the expenses claimed. The expenses claimed remains unverified. The estimated disallowance is reasonable. In this view of facts, the disallowance made is upheld and Ground of Appeal is dismissed.”

4. Considered the rival submissions and perused the material on record. We find that the Assessing Officer has made ad-hoc disallowance to the tune of 10% of administrative expenses without actually verifying the expenses. The first appellate authority has also confirmed the said disallowance. We also find that there is no allegation by the Revenue that the assessee claimed any bogus expenses or any attempt is made to defraud the Revenue. Under these circumstances keeping in view factual matrix of the case, we are of the considered view that aforesaid ad-hoc disallowance of administrative expenses to the tune of 10% of the total administrative expenses incurred by the assessee is not warranted. Both the learned Counsel

for the parties also agreed before us that the issue needs to be restored to the file of the Assessing Officer for denovo adjudication on merit since the disallowance is made on estimate basis. Consequently, we set aside the impugned order passed by the learned Commissioner (Appeals) and restore the issue to the file of the Assessing Officer for denovo adjudication and direct him to consider the assessee's submissions and provide reasonable opportunity of being heard.

5. In the result, appeal is allowed for statistical purposes

Order pronounced in the open court on 31.05.2021

**Sd/-
MAHAVIR SINGH
VICE PRESIDENT**

**Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER**

MUMBAI, DATED: 31.05.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai