

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

**BEFORE SHRI M. BALAGANESH, AM AND  
SHRI PAVAN KUMAR GADALE, JM**

ITA Nos. 587 & 588/Mum/2020  
(Assessment Year: 2015-16)

Dy. CIT, Circle-12(1)(1) Room No. 128C, 1 <sup>st</sup> Floor, Aayakar Bhawan, Churchgate, Mumbai-400 020	Vs.	M/s. Apurva Developers Private Limited 4 <sup>th</sup> Floor, Centrum House, CST Road, Vidhyanagari Marg, Santacruz (W), Mumbai-400 098
PAN/GIR No. AAACA 8270 F		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Mehul B. Jain
<b>Respondent by</b>	:	Shri Rashmikant D. Kundalia

<b>Date of Hearing</b>	:	08.11.2021
<b>Date of Pronouncement</b>	:	10.11.2021

**ORDER**

Per M. Balaganesh, AM:

These appeals by the Revenue are directed against the order of the learned Commissioner of Income Tax (Appeals)-20, Mumbai ('ld.CIT(A) for short) dated 25.10.2019 and pertains to the assessment year (A.Y.) 2015-16.

2. Let us take up the quantum appeal of the Revenue in ITA No. 588/Mum/2020 for the A.Y. 2015-16 first. The only ground to be decided in this appeal is as to whether the ld. CIT(A) was justified in deleting the addition made on account of write off of bad debt of Rs.3 crores in the facts and circumstances of the said case.

3. We have heard the rival submissions and perused the material available on record. The assessee is a private limited company engaged in the business of builders, developers and dealers in real estates or real estate projects. The return of income for the A.Y. 2015-16 was electronically filed by the assessee on 28.09.2015, declaring the total loss of Rs.4,56,75,352/-.

4. The Id. Assessing Officer (A.O for short) during the course of assessment proceedings observed on perusal of the books of accounts of the assessee that the assessee had claimed other expenses of Rs.5,34,72,779/- which includes write off of debtors of Rs.5,33,24,853/-. The details of the debtors written off are as follows:

Sr. No.	Name	Amount
1	Pride Hill Developers P. Ltd.	3,00,00,000/-
2	Dx Technologies	94,50,000/-
3	Sadguru Estate Pvt. Ltd.	35,78,500/-
4	Sindhudurg Traders P. Ltd.	1,02,96,353/-
	Total	5,33,24,853/-

5. The Id. A.O. directed the assessee to justify the aforesaid claim of deduction during the course of assessment proceedings. The assessee submitted its reply vide letter dated 14.09.2017 and 05.10.2017, which has been acknowledged by the A.O. in para 2.3 of his order. The assessee explained that in respect of write off of Rs.3 crores on account of amounts receivable from Pride Hills Developers P. Ltd. (PHDPL), that the assessee had sold a property situated at Hill Road, Mumbai to PHDPL for a total consideration of Rs.17,50,00,000/- in A.Y. 2006-07. The assessee pointed out that it had entered into an Memorandum of Understanding (MOU) on 12.08.2005 with PHDPL to sell a property for a sum of Rs.17.50 crores, out of which PHDPL, transferred a sum of Rs.14.50 crores to the assessee and remaining Rs.3 crores was retained by them to be payable to the assessee only after the receipt of clearance from the Coastal Regulatory Zone (CRZ) authority. The assessee followed up with CRZ authority for obtaining necessary permission as agreed in the MOU, but could not succeed in obtaining the permission. Despite its persistent efforts to secure the CRZ clearance, the assessee could not succeed in its endeavour. Eventually, the assessee could not recover the sum of Rs.3 crores from PHDPL, which resulted in a bad debt to the assessee, which was eventually written off by the assessee during the year under consideration in its books and deduction claimed. The Id. A.O. did not dispute the aforesaid primary facts. The Id. A.O. observed that the assessee was very much aware of the fact that it had not obtained the clearance from CRZ authority within the prescribed time as mandated in MOU. Hence, this sum of Rs.3 crores, which was receivable from PHDPL, become bad in A.Y. 2007-08 itself to the

assessee. The Id. A.O. observed that the assessee has not written off this debt to be bad till A.Y. 2014-15 and had chosen conveniently to write off the same during the year under consideration to set off the same with the long term capital gain offered by the assessee during the year under consideration.

6. The Id. A.O. observed that had there been a write off of this sum of Rs.3 crores in earlier years, i.e., upto A.Y. 2014-15, then it could have resulted in business loss and such business loss would be eligible to get carried forward for set off only against the business income and not against the long term capital gain. Hence, the Id. A.O. observed that the assessee had adopted this device to conveniently write off the bad debt of Rs.3crores and claimed the same as a business loss during the year under consideration and set off the same with long term capital gain.

7. With regard to the other write off made by the A.O. in the sum of Rs.2,33,24,853/- , they are not in dispute before us and, hence, the facts pertaining to this disallowances are not adjudicated herein.

8. The Id. CIT(A) observed that during the A.Y. 2006-07, when the assessee has sold the property, the assessee had included the entire amount of Rs.17.50 crores (Rs.14.50 crores + Rs.3 crores) as sale consideration in its return of income and paid taxes thereon as prescribed. Out of such sum of Rs.17.50 cores, a sum of Rs.3 crores was retained by PHDPL as per the MOU dated 12.08.2005 pending compliance with certain terms and conditions by the assessee. Since the assessee could not comply with the mandated terms and conditions of the MOU, PHDPL refused to pay Rs.3 crores to the assessee, which was treated as bad by the assessee and eventually written off the same in its books. The Id. CIT(A) had observed that it is for the assessee to decide that the bad debt is to be written off in its books of accounts. He also observed that the A.O. has not disputed the fact that the assessee had written off the said sum of Rs.3 cores in its books of accounts. He observed that the A.O. has merely questioned the timing of the bad debt written off by the assessee, which was found to be travelling beyond the brief of the Id. A.O., as it

would tantamount to Id. A.O. dictating terms to the assessee as to how he should conduct its affairs. With these observations, the Id. CIT(A) also observed that the assessee had indeed offered the entire sum of Rs.17.50 crores to tax by way of sales consideration in A.Y. 2006-07 in the year of transfer of land. With these observations, the Id. CIT(A) deleted the disallowances made on account of bad debt of Rs.3 crores.

9. Aggrieved, the Revenue is in appeal before us.

10. It is not in dispute that the assessee had offered the sum of Rs.17.50 crores towards sale consideration on transfer of property in A.Y. 2006-07. It is not in dispute that the sum of Rs.3 crores which is the subject matter of write off by the assessee is included in the aforesaid sum of Rs.17.50 crores. The primary facts stated hereinabove remain undisputed and, hence, the same are not reiterated for the sake of brevity. It is a fact that the assessee could not comply with the mandated terms and conditions of the MOU dated 12.08.2005, which eventually led to non receipt of retained amount of Rs.3 crores from PHDPL. This had eventually led to a situation of writing of the said debt of Rs.3 crores receivable from PHDPL by the assessee and, accordingly, the assessee during the year under consideration choose to write off the same as bad debt. The conditions prescribed in section 36(2) of the Act has been fulfilled by the assessee inasmuch as the income has already been offered in the A.Y. 2006-07. We are in agreement with the observations made by the Id. CIT(A), that it is not for the Id. A.O. to dictate terms as to when and how the assessee should write off a particular debt. The law is very well settled that it is not for the Id. A.O. to suggest as to how the assessee should conduct its affairs and every commercial decision taken should be viewed from the point of view of businessmen and not from the point of view of the Revenue. It is also well settled that every businessmen knows his interest best. Reliance in this regard is placed on the celebrated judgment of the Hon'ble Supreme Court in the case of *CIT vs. Dhanrajgirji Raja Narasingirji* (1973) 91 ITR 544 (SC). It is not in dispute that the said sum of Rs.3 crores had indeed become bad for the assessee inasmuch as the non realization of the same had happened due to non compliance of the mandated terms and conditions of the

MOU by the assessee, hence, there was absolutely no scope for the assessee to recover that balance consideration of sum of Rs.3 crores from PHDPL even though income was already offered by it in A.Y. 2006-07. In view of the aforesaid observations and respectfully following the judicial precedent hereinabove, we do not find any infirmity in the order of the Id. CIT(A), granting relief to the assessee in the facts and circumstances of the instant case. In our considered opinion, the order of the Id. CIT(A) does not warrant any interference. Accordingly, the grounds raised by the Revenue are dismissed.

11. The appeal of the Revenue for A.Y. 2015-16 in ITA No. 588/Mum/2020 is challenging the levy of penalty u/s.271(1)(c) of the Act on the aforesaid disputed addition of Rs.3 crores. Since, the quantum addition has already been deleted by us, the levy of concealment penalty u/s.271(1)(c) of the Act would have no legs to stand.

12. In the result, these appeals by the Revenue are dismissed.

*Order pronounced in the open court on 10/11/2021.*

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(M. Balaganesh)  
Accountant Member

Mumbai; Dated : 10.11.2021  
Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar/Sr. Private Secretary)  
ITAT, Mumbai