

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.1058/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2009-10)

The Assistant Commissioner of Income Tax Non-Corporate Circle-20(1) Chennai-34.	Vs	M/s. PVP Cinemas P.Ltd. KRM Centre, 9 th floor, No.2,Harrington Road, Chetpet , Chennai-600 031.
		PAN: AAECA 8733H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. AR V Sreenivasan, Addl. CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. B. Ramakrishnan, C.A

सुनवाईकीतारीख/Date of hearing	:	25.01.2022
घोषणाकीतारीख /Date of Pronouncement	:	16.03.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order passed by the learned Commissioner of Income Tax (Appeals)-14, Chennai, dated 30.10.2017 and pertains to assessment year 2009-10.

2. The Revenue has raised following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.

2.1 The learned CIT(A) erred in not upholding the addition of Rs.1,98,57,543/- in spite of the fact that the building standing on the land at the time of purchase having been demolished by the assessee before sale of the impugned land.

2.2 The Ld. CIT(A) erred in directing the assessing officer to allow the cost of acquisition and cost of indexation to the building which was never part of land sale affected by the assessee.

3.1 The CIT(A) erred in deleting the disallowance of Rs.1,52,19,882/- while computing the short term capital gains without verifying the genuineness of the bills submitted before him more so when such bills were not produced before the assessing officer during the course of assessment proceedings.

3.2 The CIT(A) erred in deciding the matter of disallowance of Rs.1,52,19,882/- without giving opportunities to the assessing officer by remanding the matter under Rule 46A of IT Rules, 1962.

3.3 The CIT(A) erred in invoking the sub-rule (4) of Rule 46A of IT Rules, 1962 when no independent enquiry or production of any document was sought by CIT(A) and on the contrary documents furnished by the assessee on his own including Xerox copy of the bills were accepted without any verification or remand.

3.4 The CIT(A) erred in accepting the claim of the assessee that M/s AGS properties and Development (India) Pvt. Ltd. is wound up without verifying the same by remanding the matter to the assessing officer.

4. For these arid other grounds that may be adduced at the time of hearing, it is prayed that the order of The learned CIT(A) may be set aside and that of the Assessing Officer restored.”

2. Brief facts of the case are that the appellant company is engaged in the business of builders and property developers, filed its return of income for the assessment year 2009-10 on 29.07.2009 declaring total loss of Rs.5,30,71,503/-. The assessment for the impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961, on

21.12.2011 and determined total income at Rs.5,26,48,260/- by making various additions, including additions towards computation of long term capital gain and short term capital gain for sale of property. The assessee carried the matter in appeal before first appellate authority and the learned CIT(A) vide his order dated 28.03.2013 has dismissed appeal filed by the assessee and sustained additions made by the Assessing Officer towards long term capital gain and short term capital gain. The assessee carried the matter in further appeal before the Tribunal and the Tribunal vide its order dated 06.08.2014 in ITA No.1009/Mds/2013 set aside the issue to the file of the Assessing Officer with a direction to redo the assessment, after considering relevant materials/evidence/bills & vouchers that would be produced before the Assessing Officer and decide the issue afresh in accordance with law. Consequent to the directions of the Tribunal, the Assessing Officer called upon the assessee to file necessary evidences to justify cost of acquisition claimed against computation of long term capital gain from transfer of land as well as computation of short term capital gain from transfer of building. In response, the assessee vide its letter dated 14.03.2016 submitted certain information,

however, sought more time to file further evidences. The Assessing Officer, after considering relevant materials concluded the assessment and assessed long term capital gain derived from transfer of property at Rs.4,81,58,512/- and reiterated his findings in respect of deduction towards indexed cost of acquisition. The Assessing Officer has also computed short term capital gain at Rs.21,30,495/- by disallowing certain expenditure claimed by the assessee, including payment made to M/s. Bharath Polymers & M/s. Devi Designers & Decorations on the ground that the assessee could not produce necessary bills & vouchers in support of expenses.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee agitated additions made by the Assessing Officer towards long term capital gain derived from sale of land and short term capital gain computation from transfer of building. The assessee has filed certain additional evidences in the form of photocopies of bills in respect of payment made to M/s. Bharath Polymers & M/s. Devi Designers & Decorations along with value of document and letter of intent

/ contract awarded by the assessee. The learned CIT(A), after considering relevant facts and also taken note of additional evidences filed by the assessee, deleted additions made towards computation of long term capital gain derived from transfer of land as well as short term capital gain computed from sale of building by holding that as per provisions of section 48 of the Income Tax Act, 1961, cost of acquisition of property should also be included in the cost of acquisition of entire assets, including movable assets, if any. The learned CIT(A) also deleted additions towards short term capital gain by considering additional evidences filed by the assessee, including photocopies of bills submitted by M/s. Bharath Polymers & M/s. Devi Designers & Decorations on the ground that even though, the assessee failed to file original bills due to various reasons, but on verification of photocopies of bills submitted by the assessee with corroborative evidences which proves the fact that the assessee has incurred certain expenses for construction of building and thus, same needs to be allowed while computing capital gain from transfer of property. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us.

4. The first issue that came up for consideration from ground no.2.1 to 2.2 of the revenue appeal is additions made towards computation of long term capital gain derived from sale of land by reducing indexed cost of acquisition of the property. The facts with regard to impugned dispute are that M/s. AGS Properties Development (India) P.Ltd. is wholly owned subsidiary of M/s. Telephoto Entertainments P.Ltd. M/s.Telephoto Entertainments P.Ltd is subsidiary of M/s. SSI Ltd. M/s. SSI Ltd. amalgamated with M/s. PVP ventures P.Ltd., by an order of the Hon'ble Madras High Court dated 25.04.2018. Consequent to amalgamation, M/s. PVP group took over management of M/s.SSI Ltd. along with its subsidiaries. During the financial year 2005-06, AGS Properties Development (India) P. Ltd., purchased a theatre from Royal talkies for consideration of Rs.4 crores and same has been divided into cost of land at Rs.2.61 crores and cost of building, plant & fittings at Rs.1.39 crores. The assessee has redeveloped the theatre, because it was more than four decades old and for this purpose, has obtained financial assistance from Union Bank of India. The assessee could not complete the project due to various reasons and thus, decided

to sell the property through public auction. The public auction was conducted on 19.11.2008 and property has been sold for a consideration of Rs.22.22 crores. The sale consideration has been apportioned between land and building as per which consideration for transfer of land has been fixed at Rs.8.17 crores and consideration for transfer of building along with machineries etc. was fixed at Rs.14.05 crores. The assessee has computed long term capital gain from transfer of land, because holding period of land was more than three years and while computing long term capital gain, the assessee has claimed deduction towards indexed cost of acquisition at Rs.5,31,65,173/-, which includes consideration paid by the assessee for land as well as building. The Assessing Officer has recomputed indexed cost of acquisition by taking into account cost of land which was paid by the assessee at Rs.2.61 crores plus applicable stamp duty. The Assessing Officer had ignored cost of building on the ground that assessee has demolished existing old building and has constructed new building. Therefore, the A.O. was of the opinion that cost of existing old building cannot be considered as cost of acquisition. It was the explanation of the assessee

before the Assessing Officer that it has paid total consideration of Rs.4 crores for acquiring property, which includes cost of land as well as building, plant and fittings and thus, as per provisions of section 48 of the Income Tax Act, 1961, cost of acquisition includes total amount paid for acquisition of property, including movable asset, if any, and thus, total loss needs to be allowed as deduction.

5. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has acquired property, from Royal Talkies for consideration of Rs.4 crores, which includes cost of land, cost of building, machinery and fittings. The assessee claimed that it has redeveloped building and renovated without removing existing structure, including plant and machinery. Therefore, the learned AR for the assessee has argued that while computing long term capital gain derived from sale of land cost incurred by the assessee, including cost of machinery and fittings also needs to be allowed.

6. We have given our thoughtful consideration to the reasons given by the Assessing Officer in light of arguments advanced by the learned AR for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that when the Assessing Officer is not disputing fact that the assessee has paid Rs.4 crores consideration for acquiring property, then the Assessing Officer ought to have allowed deduction towards cost of acquisition, including cost of building, machinery and fittings, because when the consideration was paid for fittings & machinery and same was integral part of building, then the Assessing Officer cannot simply ignore amount paid for acquiring assets attached to the building. It was not the case of the Assessing Officer that the assessee has claimed depreciation on machinery and fittings, including building. It is also not the case of the Assessing Officer that the assessee has demolished existing building and dismantled plant & fittings. Unless the Assessing Officer proves that the assessee has demolished existing building and dismantled machinery & fittings and realized amount from sale of said dismantled assets or written off as scrap, then he cannot deny cost incurred by the assessee to

acquire those assets. In our considered view, the Assessing Officer has completely erred in not considering cost incurred by the assessee to acquire asset while computing capital gain derived from sale of property. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

7. The next issue that came up for our consideration from ground no. 3.1 to 3.4 of the revenue appeal is disallowance of amount paid to M/s. Bharath Polymers & M/s. Devi Designers & Decorations amounting to Rs.1,52,19,882/- for construction of building. The Assessing Officer has disallowed payment made to M/s. Bharath Polymers on 24.11.2007 and 09.10.2007 amounting to Rs.2,64,071/- and Rs.1,94,471/- on the ground that the assessee could not produce original bills in support of various expenditure incurred for construction of building. It was explanation of the assessee that original bills could not be traced, because building was developed by previous company before amalgamation and thus, it could not locate documents and hence, obtained photocopies of bills from the supplier and produced before the Assessing Officer. The Assessing Officer

did not satisfy with the explanation furnished by the assessee and according to him, the assessee could not explain payment made to the above party with necessary evidences.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Admittedly, the assessee produced photocopies of bills issued by M/s. Bharath Polymers for supply for certain materials for construction of building, when it could not trace original bills issued by supplier. The learned CIT(A) has considered photocopies of the bills and allowed deduction to the assessee on the ground that if you consider photocopies of bills along with circumstantial evidences, including construction of building, it was undoubtedly proved that the assessee has incurred expenditure for construction of building. Further, the assessee had also filed other evidences, including tender quote and letter of intent / work order to prove that it has placed orders for purchase of certain materials. From the above, what is clear is that it was not the case of the Assessing Officer that no evidence has been filed by the assessee to justify payment made to above party. But, the Assessing Officer has denied

deduction only for the reason that the assessee could not produce original bills. We do not agree with the reasoning given by the Assessing Officer for the simple reason that when the assessee has explained reasons for not furnishing original bills and further, filed photocopies of bills along with corroborative evidence to prove incurrance of expenditure for construction of building, the Assessing Officer ought to have allowed deduction towards payment made to above party. The Assessing Officer without appreciating facts has simply disallowed payment made by the assessee towards construction of building without assigning proper reasons. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

9. Coming back to payment made to M/s. Devi Designers & Decorations. The assessee had given contract for construction of theatre, including interior works to M/s. Devi Designers & Decorations for an amount of Rs.2.30 crores. The supplier has been issued work order as per letter of intent to carry out work for an amount of Rs.2.30 crores. The supplier has completed

work and submitted bill for an amount of Rs.1,63,49,002/-. The assessee has certified the bill submitted by the supplier for final amount of Rs.1,47,61,340/- and made payment. The Assessing Officer disallowed payment made to M/s. Devi Designers & Decorations only on the ground that the assessee could not produce original bills submitted by the supplier, otherwise, the Assessing Officer never disputed fact that supplier has carried out construction work. In fact, the assessee has furnished photocopies of bill submitted by the supplier along with tender documents and letter of intent, which undoubtedly proves fact that the supplier has carried out work of construction of building and the assessee has made payment. The Assessing Officer without appreciating above facts has simply disallowed payment made to above party only on the ground of non-furnishing of original bills, even though the assessee has filed photocopies of bills submitted by the supplier. In our considered view, reasons given by the Assessing Officer to disallow amount paid to above party is incorrect and without any basis. If at all, the Assessing Officer was having any doubt on payment made by the assessee, then A.O. should have summoned the supplier to verify fact of payment made by the assessee. The

Assessing Officer without carrying out proper enquiry, has simply rejected contention of the assessee only on the ground that original bill was not furnished by the assessee. In our considered view, whether the bill submitted by the assessee is in original or duplicate, as long as other corroborative evidences supports claim of the assessee, then the Assessing Officer ought to have allowed deduction towards amount paid for construction of building. The learned CIT(A), after considering relevant facts has rightly directed the Assessing Officer to allow deduction towards amount paid to M/s. Devi Designers & Decorations. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

10. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16th March, 2022

Sd/-
(वी. दुर्गा राव)
 (V.Durga Rao)
 न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
 (G.Manjunatha)
 लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 16th March, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.p