

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No. 2287/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Orchid Foundations Pvt. Ltd. No. 99, V.M. Street, Mylapore, Chennai – 600 004.	बनाम/ Vs.	ITO Corporate Ward -5(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACO-9862-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri. S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri. G. Johnson (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	17-05-2022
घोषणा की तारीख / Date of Pronouncement	:	06-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] dated 30.06.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28.11.2016. The grounds taken by the assessee read as under:

1. The order of the Commissioner of Income Tax (Appeals) 3, Chennai dated 30.06.2017 in I.T.A.No.146/2016-17/A-3 for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the Case.
2. The CIT (Appeals) erred in sustaining the disallowance of the payments made to the encroachers aggregating to Rs.8,11,75,000/- in computing the taxable total income without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the expenses incurred were wholly and exclusively for the purpose of business, allowable as deduction within the scope of section 37(1) of the Act.
4. The CIT (Appeals) failed to appreciate that the misreading of the documents filed which were entered into by the appellant in the core the claim for incurring such expenses would vitiate the findings from para 4.5 of the impugned order.
5. The CIT (Appeals) failed to appreciate that the detailed submissions filed in writing with supporting evidence/documents/materials with a view to fortify the claim for deduction were completely overlooked and brushed aside in recording the findings from para 4.5 of the impugned order while sustaining the disallowance of such expenses in the computation of taxable total income.
6. The CIT (Appeals) failed to appreciate that having not disputed the fact of eviction of encroachers; the findings recorded to sustain the disallowance of expenses incurred for such eviction based on technical reasons were wholly unjustified.
7. The CIT (Appeals) failed to appreciate that the limited cross verification was not carried out properly and further ought to have appreciated that the lack of proper cross verification would vitiate the findings from para 4.5 of the impugned order.
8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.
9. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

As evident, the sole subject matter of appeal is deduction of expenditure of Rs.811.75 Lacs.

2. The Ld. AR advanced arguments assailing the orders of lower authorities and filed written submissions. The Ld. AR, inter-alia, submitted that impugned expenditure was incurred for business purposes and the same was allowable u/s 37(1). The Ld. Sr. DR, on the other hand, controverted the arguments of Ld. AR and justified the disallowance. The Ld. DR submitted that impugned payments were not the liability of the assessee and the sale agreement was done with respect to already encroached property. Having heard rival submissions

and after due consideration of orders of lower authorities, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in the business of real estate, promotion, development and construction of residential, commercial, individual complexes and other allied activities. During assessment proceedings, it transpired that the assessee reflected revenue of Rs.412.96 Lacs on sale of constructed area measuring 6607.38 Square Feets against net available space of 37632 Square Feets. This property was on a land located at Kumarappa Mudali Street, Nungambakkam and was stated to be purchased by the assessee from M/s. Adippalli Kandaswamy Chetty & Chenchu Venkatasubbu Guruvajamma Charities Association during August, 2008. The net value of the property as on 31.03.2014 was shown as 2874.16 Lacs, out of which Rs.1533.36 Lacs was in the nature of site encroachment charges, land owners' payment etc. Similar expenditure of Rs.662.61 Lacs was claimed in earlier assessment year. Accordingly, the assessee was directed to explain the nature of expenditure.

3.2 It further transpired that the assessee entered into three sale agreements with M/s Sree Venkataeswara Constructions (SVC) on 18.03.2011 for sale of 15.68 grounds for total consideration of Rs.1750 Lacs. It was stated that the land was under encroachment and based on the strength of the sale agreements, SVC made efforts for clearing the encroachment. While doing so, they incurred a sum of Rs.811.75 Lacs by way of payment to various parties to clear the encroachment. The said payment was stated to be made on behalf of the assessee company. In response to notice u/s 133(6) as sent by Ld. AO, SVC filed

details along with copy of receipts from the encroachers for the payment so made. At the same time, the assessee was directed to present the payees to whom sum of Rs.20 Lacs or more was paid as eviction charges. The assessee filed list of such encroachers but could not present the parties except two persons to whom the payment of Rs.75 Lacs and Rs.50 Lacs was stated to have been paid as eviction charges. It was noted by Ld. AO that the two evictees did not have PAN and not assessed to tax. The two evictees also failed to produce any passbook to establish that they had received the payments.

3.3 Since the assessee failed to substantiate the claim so made, the expenditure was disallowed by Ld. AO with following observations: -

As the claim of the assessee company through its authorized representative is not substantiated in any way, the claim that M/s Sree Venkataeswara Constructions had invested a sum of Rs.8,11,75,000/- towards eviction charges on behalf of M/s Orchid Foundations is refuted as being non-bonafide and is disallowed.

In the result, the value of work-in-progress as shown in the Balance Sheet was reduced by Rs.811.75 Lacs and proportionate work-in-progress expenses were also reworked on the basis of which Ld. AO arrived at taxable income of Rs.50.84 Lacs.

Appellate Proceedings

4.1 During appellate proceedings, the assessee submitted that the property so purchased was an encroached property. The assessee could remove only a part of encroachers. In the meantime, the assessee could find a buyer of the property i.e., SVC who was ready to buy the property with the remaining encroachers. The intended purchaser incurred a sum of Rs.811.75 Lacs in evicting the encroachers which was duly evidenced

by copy of receipts from encroachers. The bank statement of SVC highlighting the aforesaid payment was also enclosed.

4.2 Subsequently, due to continuous litigation at various fronts, SVC was not willing to proceed further in the transaction and debited assessee's account with Rs.811.75 Lacs being the amount spent by them in evicting the encroachers. Accordingly, these expenses were debited to project account with corresponding credit to SVC. The assessee also pointed out that the two encroachers were presented before Ld. AO and both of them accepted receipts of amounts. The address of two more encroachers was produced since they were unwilling to present themselves before Ld. AO. It was also pointed out that the following documents were produced in support of the claim: -

- (a) Copy of Sale Deed in favor of the appellant and copies of the agreements with M/s Sree Venkataeswara Construction which acknowledges and evidence the presence of the encroachers on the property
- (b) Receipts obtained from encroachers in respect of the payments made to them and cross referencing to Bank statement
- (c) Copy of Bank statement of M/s. Sree Venkataeswara Construction duly highlighting the payments made to encroachers
- (d) Presentment of two encroachers in person before the assessing authority and furnishing the current addresses of two encroachers.

4.3 The Ld. CIT(A) observed that the assessee had purchased the property fully knowing the problem of encroachment. M/s SVC was willing to buy this property with remaining encroachers and accordingly, entered into three sale agreements with the assessee. Subsequently, the intended purchaser paid eviction charges to clear the encroachment. The Ld. AO, after due investigation, came to a conclusion that the assessee could not furnish the details and also could not produce the encroachers to whom the eviction charges were paid. Though the assessee could produce two such payees before Ld. AO, however, they

could not substantiate the claim of receiving eviction charges by producing evidences. Accordingly, the claim was disallowed by Ld. AO. M/s SVC purchased the property fully knowing the presence of the encroachers on the said land. Secondly, the agreement entered into between the assessee and SVC would reveal that no such condition was agreed with regard to reimbursement of expenditure incurred by SVC. It was also not ascertainable whether SVC had claimed this expenditure in its books of account. Further, the assessee accepted the claim from SVC without any protest though the parties had right to sue for specific performance of contract in the event of default. Lastly, the said expenditure purportedly incurred by SVC could not be allowable expenditure in the hands of the assessee. Rather the transaction seemed to be collusive one and the bona-fides of the transactions were doubtful. Accordingly, Ld. AO was right in rejecting the claim of eviction charges. Finally, the stand of Ld. AO was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. Upon careful consideration of material facts, it could be gathered that the assessee was engaged in the business of real estate development. It is undisputed fact that the property was an encroached property and the assessee was able to clear some of the encroachers by himself by paying some amount which were claimed as well as allowed in earlier years as noted by Ld. AO in the assessment order. Since the assessee was not able to fully clear the encroachments and the property was under litigation, it entered into three sale agreements with SVC on 18.03.2011. The consideration was fixed at Rs.1750 Lacs. However, due to continuous litigation, SVC wanted to cancel the proposed deal and

sought reimbursement of eviction charges spent by it in clearing the encroachments. The same has been capitalized by the assessee as work-in-progress as Project development expenditure and a proportion of the same has been claimed as per accrual of income since the assessee has effected 6607.38 Square Feet sale of land for consideration of Rs.412.96 Lacs.

6. The intended purchaser i.e., M/s SVC made efforts for clearing the encroachments and incurred expenditure of Rs.811.75 Lacs which were paid through banking channels. The details of payment as well as the bank statement and acknowledgement / receipts were already furnished to Ld. AO during the course of assessment proceedings. Subsequent to entering into sale agreements, the property was under continuous litigation since the erstwhile owners M/s. Adippalli Kandaswamy Chetty & Chenchu Venkatasubbu Guruvajamma Charities Association filed a criminal case and claimed that the land was forcefully grabbed. Another person Mr. Lucky Lalchand also claimed leasehold rights over the 7 grounds of the property and sent a notice to the assessee and filed a plaint before the City Civil Court Chennai XVI vide OS No. 6619 of 2012 which is in further appeal. Similarly, one of the encroacher Mr. Kathir continued to be in occupation of the property against whom the assessee was pursuing civil suit. In other words, there was continuous litigation at various fronts which led SVC wanting to cancel the deal.

7. Since M/s SVC incurred eviction charges, it sought reimbursement of the same from the assessee and accordingly, the expenditure has been debited as work-in-progress with corresponding credit to M/s SVC. It could also be seen that the payments were made by SVC through banking channel and acknowledgment / receipts from evictees were

placed before Ld. AO. The details of payment so made were furnished to lower authorities. The assessee was also able to produce two of the evictees who confirmed having received the eviction charges. Merely because the evictees did not have PAN or not assessed to tax, the same would not jeopardize the claim of the assessee. M/s SVC responded to notice u/s 133(6) and confirmed the payments. There is nothing adverse on record except for mere allegation that the transaction appeared to be collusive one and the bona-fides of the transactions were doubtful. There is no concrete material to substantiate this conclusion. It could also be seen that the assessee was into the business of real estate development and such expenditure would fulfill the test laid down u/s 37(1) and it could very well be said that the expenditure was incurred for business purposes of the assessee. To discharge the onus, the assessee had produced following documentary evidences in support of the claim: -

- (i) Copy of Bank statement of M/s. Sree Venkateswara Construction duly highlighting the payments made to encroachers (Page No. 59-74 of the paper book)
- (ii) Copies of receipts obtained from encroachers in respect of the payments made to them and cross referencing to the bank statement.
- (iii) The acknowledgement of payment from two encroachers

Considering the aforesaid facts and circumstances, we would hold that the claim as made by the assessee was allowable as business expenditure. To dispel the concern of the Ld. DR that the same amount could have been claimed as expenditure by M/s SVC, we direct Ld. AO to verify the fact that the aforesaid expenditure was never claimed by M/s SVC. If so, the expenditure would be allowable to the assessee. The same would be allowed to be capitalized and proportionate expenses as claimed by the assessee would be allowed. We order so.

8. In the result, the appeal stand allowed in terms of our above order.
Order pronounced on 06th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 06-07-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF