

THE INCOME TAX APPELLATE TRIBUNAL
“B” Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 341/Mum/2021 (A.Y. 2011-12)
I.T.A. No. 344/Mum/2021 (A.Y. 2014-15)
I.T.A. No. 347/Mum/2021 (A.Y. 2016-17)

M/s. Sapphire Land Development Pvt. Ltd. Room No. 5, 3 rd Floor Capri, Anant kanekar Marg, Bandra East Mumbai-400 051. PAN : AAACS7785H (Appellant)	Vs.	DCIT, Central Circle-5(4) Room No. 1927 19 th Floor Air India Building Nariman Point Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri M. Raghuv eer
Date of Hearing	04.07.2022
Date of Pronouncement	04.07.2022

ORDER

Per B.R.Baskaran (AM) :-

All the appeals filed by the assessee are directed against the orders passed by learned CIT(A)-53, Mumbai and they relate to A.Y. 2011-12, 2014-15 & 2016-17.

2. None appeared on behalf of the assessee, even though notices were sent by registered post to the assessee on several occasions. We also find that notice was also issued through the Assessing Officer. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. The assessee is engaged in the business of builder and developers.

4. First we shall take up the appeal filed for A.Y. 2011-2.

5. The Assessing Officer originally completed the assessment for this year under section 143(3) on 26.3.2014. Later he reopened the assessment by

issuing notice under section 148 of the I.T. Act on noticing that a part of yatch expenses proposed to be disallowed in the original assessment order, was omitted to be disallowed. Accordingly he completed the assessment by making addition of Rs. 1,03,76,000/- relating to yatch finance expenses.

6. Before learned CIT(A), the assessee challenged the validity of reopening of the assessment and also addition made by the Assessing Officer. However, none appeared before learned CIT(A) and hence he proceeded to dispose of the appeal ex-parte, without presence of the assessee. The Ld CIT(A) upheld the validity of reopening of assessment and also confirmed the addition. Aggrieved, the assessee has filed this appeal.

7. We heard learned Departmental Representative and perused the record. We have noticed earlier that learned CIT(A) was constrained to pass the order ex-parte, since assessee did not represent before him. In the interest of natural justice, we are of the view that the assessee may be provided with an opportunity to present its case before learned CIT(A). In fact, affording one more opportunity to the assessee will not cause harm to the revenue and in turn, it would promote cause of justice. Accordingly we set aside the order pass by learned CIT(A) and restore all the issues urged in A.Y. 2011-12 to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

8. We shall now take up the appeal for A.Y. 2014-15, wherein following additions confirmed by learned CIT(A) are being agitated by the assessee :-

- a) Disallowance under section 14A of the Act
- b) Disallowance of yatch expenses
- c) Disallowance of travelling and car expenses
- d) Addition of deemed rent
- e) Disallowance of depreciation on motor car

9. First issue relates to addition made under section 14A of the Act. The Assessing Officer noticed that the assessee has invested in equity shares of various private limited companies to the tune of Rs. 20.86 crores. However, the

assessee did not make any disallowance under section 14A. Accordingly the Assessing Officer, by invoking provisions of rule 8D(2)(iii) of the I.T. Rules disallowed a sum of Rs. 1,03,83,665/-.

10. Before learned CIT(A) the assessee submitted that it did not earn any exempt income and hence, there is no requirement of any disallowance under section 14A of the Act. The Learned CIT(A) noticed that the assessee received dividend income of Rs. 3,06,000/- but did not make any disallowance under section 14A of the Act. He took the view that the disallowance under section 14A is compulsory. However, he restricted the disallowance to the amount of exempt income of Rs. 3,06,000/-.

11. We heard learned Departmental Representative on this issue and perused the record. We noticed the Assessing Officer had disallowed a sum of Rs. 1,03,83,665/- whereas learned CIT(A) has restricted the disallowance to the amount of exempt income. We notice that the decision so rendered by learned CIT(A) is supported by the decision rendered by Hon'ble Delhi High Court in the case of M/s Marg Ltd vs. PCIT (TCA No.41 to 43 & 220 of 2017 dated 30-09-2020). Accordingly, we confirm the order passed by learned CIT(A) on this issue.

12. The next issue relates to disallowance of yacht expenses. The assessee had claimed yacht expenses of Rs. 48,61,306/-. The assessee could not prove that these expenses are related to business carried on by it. Hence, the Assessing Officer disallowed yacht expenses of RS. 48,61,306/-.

13. Before learned CIT(A), the assessee submitted that one of its group concerned named Vijaydurg Ports Pvt. Ltd. (VPPL) was constructing a Greenfiled Port project at Sindhudurg district in Maharashtra. It was submitted that the assessee company has entered into MOU with the above said company during Financial Year 2007-08 and agreed to share profit and loss arising on account of execution of Greenfiled Port Project cited above. It was submitted that the

port site did not have proper road connectivity from Mumbai and hence high speed vessel was used to commute to that place. However, learned CIT(A) also took the view that the disallowance is justified. since the assessee did not furnish copy of MOU claimed to have been entered with VPPL.

14. We have heard learned Departmental Representative and perused the record. We noticed that the only connection between the assessee and yacht expenses is the MOU claimed to have been entered by assessee with VPPL. However, it appears that the assessee has not furnished copy of MOU before the tax authorities. We are unable to understand as to how the assessee could share profit and loss through MOU. In any case, there should not be any doubt that it is the responsibility of the assessee, to prove that the MOU has created binding legal liability upon the assessee. Accordingly, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to present copy of MOU and explain its claim before learned CIT(A). Accordingly, we set aside the order passed by learned CIT(A) on this issue and restore the same to this file for adjudicating them afresh.

15. The next issue relates to the disallowance of part of travelling and car expenses. The AO examined these expenses and came to the conclusion that certain expenses are not related to the business and further details relating to certain items were not furnished. Accordingly he disallowed 10% of travelling expenses, which resulted in a disallowance of Rs.66,449/- and 10% of car expenses, which resulted in a disallowance of Rs.4,10,778/-. The Ld CIT(A) also confirmed the same.

16. We heard Ld D.R on this issue. Before us also, no detail was furnished by the assessee to contradict the findings given by the AO on the deficiencies discussed above. Accordingly, we have no other option, but to confirm the disallowance made by the AO on this issue.

17. The next issue relates to the addition relating to deemed rental income on unsold properties. The AO noticed that the assessee is in possession of certain unsold finished flats. Accordingly, he assessed deemed rental income from those unsold flats, following the decision rendered by Hon'ble Delhi High Court in the case of Ansal Housing Finance & Leasing co Ltd (29 Taxman 303). The Ld CIT(A) also confirmed the addition.

18. We heard Ld D.R on this issue. We notice that the assessee has relied upon a decision rendered by Mumbai bench of Tribunal in the case of C.R Developments (P) Ltd and also the decision rendered by Hon'ble Gujarat High Court in the case of CIT vs. Neha Builders (2008)(296 ITR 661)(Guj.). However, we notice that the Ld CIT(A) has confirmed the addition without discussing anything on the above said case laws. In our view, the Ld CIT(A) should have dealt with the above said case laws relied upon by the assessee before confirming the addition. Accordingly, we are of the view that this issue requires fresh examination at the end of Ld CIT(A). Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for examining it afresh in accordance with law.

19. The last issue relates to the disallowance of depreciation on car. The AO noticed that the assessee has shown three cars as its assets, but they stood in the name of three persons, who are employees of a sister concern. Since the vehicles were not in the name of the assessee company, the AO disallowed the claim of depreciation. The Ld CIT(A) noticed that he had confirmed identical disallowance made in the hands of the assessee in AY 2012-13. Following the same, the Ld CIT(A) confirmed the disallowance.

20. We heard Ld D.R on this issue and perused the record. There should not be any doubt that for claiming depreciation on an asset, it has to be proved that the assessee is the owner of the asset. Merely disclosing an asset as its asset in its books of account will not be sufficient to prove the ownership.

Hence, in the instant case, it is imperative for the assessee to prove that, it is in fact the owner of the vehicles, though they are standing in the name of some remotely connected persons. We notice that the assessee has not furnished enough details to prove ownership except stating that it is shown as its own asset in the books of accounts, which is not sufficient. Accordingly, we are of the view that the assessee may be provided with one more opportunity to prove ownership. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of Ld CIT(A) for examining it afresh. The assessee is also directed to furnish adequate information and evidences to prove the ownership of vehicles. After hearing the assessee, the AO may take appropriate decision in accordance with law.

21. We shall now take up the appeal filed for AY 2016-17. The only issue urged by the assessee in this appeal relates to the assessment of deemed rental income. In the preceding paragraphs, while dealing with the appeal of the assessee filed for AY 2014-15, we have restored an identical issue to the file of Ld CIT(A) for examining it afresh. Following the same, we restore this issue to the file of Ld CIT(A) with similar directions.

22. In the result, the appeals of the assessee filed for AY 2011-12 and 2016-17 are treated as allowed for statistical purposes. The appeal filed for AY 2014-15 is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 04.07.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai