

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 421/Mum/2022 (A.Y. 2011-12)

M/s. Champion Dreams Plot No. 85, Sindhi Society Chembur, Mumbai-400071. PAN : AAFC5570B (Appellant)	Vs.	PCIT Room No. 401 3 rd Floor, 6 th Tower VSRCCCL, Vashi Navi Mumbai-703. (Respondent)
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Assessee by	Ms. Ritika Agarawal
Department by	Shri Ganesh Bare
Date of Hearing	24.08.2022
Date of Pronouncement	25.08.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 26-03-2021 passed by Ld PCIT-27, Mumbai and it relates to the assessment year 2011-12. In the grounds of appeal, the assessee is challenging the validity of revision order passed by Ld PCIT. The assessee has also raised an additional ground contending that the issue examined by the Ld PCIT, viz., capitalisation of expenses, was not subject matter of re-assessment proceedings and hence the impugned revision order is beyond the scope of provisions of sec.263 of the Act.

2. The facts relating to the case are stated in brief. The assessee did not file its return of income for the year under consideration. It came to the notice of the AO that the assessee has sold two immovable properties for an amount of Rs.81,52,500/- during the year under consideration. Hence the AO reopened the assessment u/s 147 of the Act. In response to the notice issued u/s 148 of the Act, the assessee filed return of income declaring NIL income. The AO completed the assessment accepting the return of income.

However, following observations made by the AO in the assessment order are relevant here:-

“4. The case was re-opened to verify the sale of immovable properties. The assessee furnished details of cost of land and agreement for expenses incurred. The assessee furnished supporting evidences for loss incurred. Since the assessee did not file return of income u/s 139(1), the loss claimed is not allowed to be carried forward and the same is disallowed.”

It is necessary to discuss the nature of income declared by the assessee. The Ld A.R submitted that the assessee is a facilitator. It had entered into an agreement with a builder to facilitate the builder in vacating tenants in certain immovable property. In lieu of providing the services, the assessee got four flats as its service charges. Out of the said four flats, the assessee has sold two flats during the year under consideration. The assessee has treated the sale of flats as its business activity and accordingly, it has prepared a Profit and Loss account for the year under consideration as under:-

PROFIT AND LOSS ACCOUNT

To Cost of land	43,60,720.00	By Sales	63,00,000.00
“ Compensation &			
Tenant payments	86,40,690.00	“ Closing WIP	57,84,986.00
		“ Gross loss	9,16,424.00
	-----		-----
	1,30,01,410.00		1,30,01,410.00
	=====		=====
To Gross Loss	9,16,424.00	By Net loss	10,36,424.00
“ Society charges	1,20,000.00		
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	10,36,424.00		10,36,424.00
	=====		=====

3. Upon examination of assessment records, the Ld PCIT noticed that the assessee has claimed a sum of Rs.86,40,690/- on account of "Compensation & Tenant Payments" in the Profit and Loss account. The Ld PCIT took the view that the above said amount should have been capitalised by the assessee by including it in "Work in Progress" so as to arrive at true profits. The Ld PCIT held that the AO has not verified this aspect and hence the impugned assessment order is rendered erroneous and prejudicial to the interests of revenue. Accordingly, the Ld PCIT initiated revision proceedings u/s 263 of the Act. After hearing the assessee, the Ld PCIT held that the assessment order is erroneous and prejudicial to the interests of the revenue in not considering the capitalisation of amount of Rs.86,40,690/- on account of "Compensation & Tenant Payment" to the value of Work in Progress. Accordingly, the Ld PCIT set aside the assessment order with the direction to pass fresh assessment order.

4. The Ld A.R submitted that the assessing officer has reopened the assessment, only for the purpose of assessing the sale of flats. During the course of assessment proceedings, the AO has made due enquiries with regard to the sale of flats. The Ld A.R invited our attention to the copy of notice issued u/s 142(1) of the Act, wherein the AO had asked the assessee to furnish details of sales as well as expenses claimed with supporting evidences. The Ld A.R submitted that the assessee has furnished Profit and Loss account and the same has been examined by the AO. She further submitted that the cost of four flats consisted of cost of land as well as Compensation & Tenant Payment. The assessee has shown sale of two flats in the Profit and Loss account and the value of remaining two flats has been shown as "Closing WIP". She submitted that the said value of Closing WIP included proportionate cost of Compensation & Tenant Payment. Accordingly, the Ld A.R submitted that the Ld PCIT was not correct in coming to the conclusion that the assessee has not capitalised the cost of Compensation & Tenant Payment.

5. The Ld A.R further submitted that the assessing officer has reopened the assessment only to examine the taxation of sale of two flats, which has been duly examined by the AO. She submitted that the Ld PCIT has ventured into examining expenses claimed as “Compensation & Tenant Payment”, which was beyond the scope of the re-assessment proceedings. Hence the Ld PCIT could not have made enquiries with regard to an issue, which was not within the scope of re-assessment proceedings at all. Accordingly, the Ld A.R contended that the impugned revision proceeding is illegal. In support of this contention, the Ld A.R placed her reliance on the decision rendered by the co-ordinate bench in the case of Royal Western India Turf Club vs. PCIT (ITA No.640/Mum/2021 dated 12-10-2021).

6. On the contrary, the Ld D.R submitted that the assessee has declared the sale of flats as its business income, against which it has claimed certain expenses. Accordingly, it has arrived at business loss. The AO has also accepted the activities of the assessee as business activities. While assessing the business income, the AO is necessarily required to examine the expenses part also, since the net business income is arrived at after deducting expenses from the value of sale of flats. Hence, it cannot be said that the Ld PCIT has exceeded his revisional power. He further submitted that the AO has not examined the correctness of WIP declared by the assessee. He has simply called for details of sales and expenses. In response thereto, the assessee has only furnished Profit and Loss account. He submitted that the AO has not discussed anything about the nature of enquiry conducted by him. Hence it is not discernible as to whether the AO has applied his mind or not. Accordingly, he submitted that the Ld PCIT has rightly initiated revision proceedings u/s 263 of the Act and hence the order passed by him should be sustained.

7. We heard rival contentions and perused the record. We notice that it is stated in the assessment order that the assessment is reopened for the

reason that the assessee has sold two immovable properties. It so happened that the assessee has declared the sale value of immovable properties as its business receipts and has claimed expenses against it. We notice that the AO has accepted the business loss declared by the assessee. Hence, as rightly pointed out by Ld D.R, the business loss could not have been determined without deducting relevant expenses. In this factual aspect, examining of expenses claimed by the assessee was very much within the scope of reassessment proceedings. Hence, in our view, it cannot be said that the expenses claimed by the assessee would be beyond the scope of revision proceedings. Accordingly, we reject this contention of Ld A.R and hold that the Ld PCIT was very much within his powers in examining the expenses claimed by the assessee as "Compensation & Tenant Payment". Hence the decision relied upon by Ld A.R is not applicable to the facts of the present case.

8. Now coming to the view taken by Ld PCIT that the expenses claimed as "Compensation & Tenant Payment" should have been capitalised and should have been included in WIP, we are of the view that the Ld PCIT may not be fully correct in observing so. This is for the reason that, if the assessee has incurred these expenses in common and accordingly, if it is attributable to all the four flats received by the assessee, then what is required to be included in the value of "Closing WIP" is the proportionate cost of "Compensation & Tenant Payment" attributable to the two unsold flats and not the entire cost of "Compensation & Tenant Payment".

9. We notice that there is nothing on record to show that the AO has examined this aspect at all. We noticed that the AO had asked for details of sales and expenses, but the assessee has furnished only the Profit and Loss account. It is not shown to us that the AO did make any enquiry in respect of expenses or about the value of "Closing WIP". We also notice that the AO has not examined the allocation of cost between the "two sold flats" and "two

unsold flats”. There should not be any dispute that improper allocation will have effect on the profit computed by the assessee. In our view, the Ld PCIT was driving this point only in his revision order. We notice that the AO has not carried out such verification during the course of assessment proceedings resulting in non-application of mind and, in our view, the same would render the assessment order erroneous and prejudicial to the interests of revenue. In this regard, we derive support from the decision rendered by Hon’ble Supreme Court in the case of Malabar Industrial Co (243 ITR 83)(SC).

10. We have noticed that the Ld PCIT was not fully correct in holding that the entire expenses claimed as Compensation & Tenant Payment should be capitalised as WIP. Accordingly, we modify the directions given by Ld PCIT and accordingly direct the AO to examine the correctness of computation of “Closing value of WIP” declared by the assessee, as the assessee has already sold two flats out of four flats.

11. In the result, the appeal filed by the assessee is partly allowed.
Order pronounced in the open court on 25.08.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

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

Mumbai; Dated : 25/08/2022

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.

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai