

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI M. BALAGANESH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 687/MUM/2020
(Assessment Year: 2014-15)

ACIT-28-3(3), Mumbai,
Room No. 313, 3rd Floor, 6th Tower,
Vashi Railway Station Complex,
Vashi, Navi Mumbai – 400703

M/s Shagun Reality,
Office No. 214, Bawa Tower,
Plot No. 76/77, Sector 17, Vashi,
Navi Mumbai - 400703
[PAN: ACIFS9168B]

..... Appellant
Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Subodh Ratnaparkhi
For the Respondent/Department : Shri B.K. Bagchi

Date of conclusion of hearing : 08.06.2022
Date of pronouncement of order : 05.09.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 15.11.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-26, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 29.12.2016, passed under section 143(3) of the Act.
2. The Revenue has raised the following grounds of appeal read as under:
 - (1) *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition of Rs.1,60,12,100/- u/s 69 of the Act on account of disallowance of land additional cost of land without*

appreciating the fact that as per the supplementary agreement dated 23.05.2013 that the said payment of Rs.1.60,12,100/- was paid to the outgoing partners of Maitri Associates, whereas, there was no liability of the assessee to pay an amount of Rs.1,60,12.100/- towards the cost of land"?

- (2) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition of Rs1,60.12.100/- u/s 69 of the Act on account of disallowance of land additional cost of land without appreciating the fact that there are no terms in supplementary agreement dated 23.05.2013 which mention reimbursement of earlier expenses to be borne by the assessee to M/s Maitri Associates"?*
- (3) *"Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was correct in deleting the addition of Rs.3,79.43,950 on account of disallowance of 50% of cost of land without appreciating the fact that in tripartite agreement dated 20.06.2013 between assessee firm ie M/s Shagun Realty, M/s Maitri Associates and CIDCO, it was categorically mentioned that only 50% of the land was transferred with all rights to assessee firm by M/s Maitri Associates"?*
- (4) *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition of Rs.3,79,43,950 on account of disallowance of 50% of cost of land without appreciating the fact that the rate of land. share area in the land expressly mentioned in the agreement indicates that cost of land is Rs.7,58,87,000/- for entire piece of land whereas as per the agreement, 50% of land left with M/s Maitri Associates"?*
- (5) *The appellant prays that the order of Ld. CIT (A) on the above grounds be reversed and that of the Assessing officer be restored.*
- (6) *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*

3. The Assessee, a partnership firm engaged in the business of builders and developers, filed its return of income on 29.09.2014 declaring 'Nil' income for the Assessment Year 2014-15. The case of the Assessee was selected for scrutiny. Assessment under Section 143(3) of the Act was completed on 29.12.2016 at income of INR 5,30,66,500/- after making addition of (a) INR 3,79,43,950/- being 50% of the original cost and (b) INR 1,60,12,100/- being 100% of the enhanced cost paid by the Assessee to M/s Maitri Associates towards acquisition of leasehold rights of a plot of land. Both the above additions were deleted by the CIT(A) in appeal filed by the Assessee. Being aggrieved, the Revenue is in appeal before us.
4. We have heard the rival submissions and perused the material on record. The Learned Departmental Representative relied upon the Assessment Order while the Learned Authorised Representative for Appellant relied upon the brief note on facts filed on 16.10.2021 and submission filed before CIT(A) (*placed at pages 1 to 8 of the paper-book*).
5. The brief facts relevant for adjudication of the grounds are that the Assessee entered into Agreement for Joint Development on 08.04.2013 with M/s. Maitri Associates for development of Plot No. 204, Sector 23, Village Ulwe, Navi Mumbai. As per the aforesaid agreement the Assessee was required to pay INR 7,58,87,900/- towards the acquisition of leasehold rights in the land. Subsequently, vide Supplementary Agreement, dated 23.05.2013, the Assessee agreed to pay additional/enhanced cost of INR 1,60,12,100/-. Thereafter, the Assessee, M/s. Maitri Associates, and City & Industrial Development Corporation of

Maharashtra Company [CIDCO] (*being the new Town Development Authority*) entered into a tripartite Agreement of Assignment-Cum-Sale, dated 20.06.2013, to give effect to the aforesaid agreements.

Ground No. 1&2

6. The Assessing Officer had made addition INR 1,60,12,100/- to the returned income holding that the Assessee was not under obligation to make payments for earlier expenses incurred by M/s. Maitri Associates. According to the Assessing Officer the amount of INR 1,60,12,100/- was required to be paid by M/s. Maitri Associates to its retired partner.

7. According to the Learned Authorised Representative for Assessee the aforesaid enhancement of INR 1,60,12,100/- was agreed upon on account of commercial reasons including the fact that M/s Maitri Associates had taken several efforts for obtaining the commencement certificate for development and had deposited necessary charges with CIDCO for the said purpose. He relied upon the copies of CIDCO receipts of INR 1,31,36,060/- evidencing the payments made by M/s Maitri Associates (placed at pages 91 & 92 of the paper-book), the copy of Balance Sheet of M/s Maitri Associates as at 31.03.2013 reflecting Work-in Progress of INR 1,56,74,959/- (placed at page 93 of the paper-book) and the Commencement Certificates (placed at pages 94 to 99 of the paper-book). The fact that the aforesaid amount was to be paid by the M/s Maitri Associates to their retiring partners was of no consequence as the Assessee had agreed for enhanced consideration on account of commercial expediency since not agreeing for the same would have resulted in stoppage of the project leading to delay in

completion and consequent business losses. This prompted the Assessee to agree for enhancing the purchase consideration by INR 1,60,12,100/- which is undisputedly a business cost and therefore, fully allowable as part of project cost of the real estate project.

8. We note that the CIT(A), after considering the above submissions, deleted the addition made by the Assessing Officer holding as under:

“7.2 Having examined all the facts of the matter including the relevant agreements. I agree with the appellant that addition of Rs. 160,12,100/- on account of enhanced land cost is not justified. The appellant has agreed for such enhanced cost due to commercial consideration. The appellant has acquired development right from M/s Maitri Associates for development of a large parcel of land at Ulwe Node, Navi Mumbai. The project was at very initial stage A.Y. 2014-15 with no construction work commencing till 31.03.2014. In such scenario, the appellant has agreed for enhancement of land cost which is supported by supplementary deed dt. 23.05.2013. The appellant must have feared that dispute with land owners will harm the progress of development. It is further important of note that there is no relationship between appellant and M/s. Maitri Associates, except that of a land owner and developer. The partners of both firms are different. It is settled law that where the transaction is genuine, revenue cannot appropriate the right to decide what is reasonable expenditure that businessman should incur for the purposes of his business. The Hon. Supreme Court in the case of Hero Cycles (P) Ltd. Vs CIT, 379 ITR 347 (SC) (2015) has pointed out that the IT authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. There is one more aspect to this addition. The appellant has not claimed deduction for the land cost including enhanced land cost in the year under appeal. The entire cost of land has been capitalized to work-in-progress. Thus, when the appellant has not claimed any deduction for such

enhanced land cost in the year under appeal, disallowance of expenditure is not appropriate. Considering all the facts including merits of the addition, I hold that the addition is not justified on merits well as in the year under appeal. For both these reasons, the addition is not merited and accordingly deleted. Ground nos. 1 & 2 are accordingly "Allowed." (Emphasis Supplied)

9. We concur with the view taken by the CIT(A). Copy of CIDCO receipts of INR 1,31,36,060/- evidencing the payments made by M/s Maitri Associates and Supplementary Agreement, dated 23.05.2013, requiring payment of INR 1,60,12,100/- by the Assessee to M/s Maitri Associates are on record. The factum of actual payment of INR 1,60,12,100/- having been made by the Assessee to M/s Maitri Associates, an unrelated third party, is not on dispute. In our view the CIT(A) was justified in observing that in case a transaction is genuine, it not for the Revenue to doubt the prudence a businessman to incur an expenditure. In view of the aforesaid, we do not find any reason to interfere with the order passed by the CIT(A) on this issue. Further, as rightly held by the CIT(A), the Assessee has capitalized the enhanced cost of land of INR 1,60,12,100/- and not claimed deduction for the same while computing income for the relevant Assessment Year. Therefore, the question of making any addition to the returned income, in any case, does not arise.
10. In view of the above, Ground No. 1&2 raised by the Revenue are dismissed.

Ground No. 3&4

11. The Assessing Officer had made disallowance of INR.3,79,43,950/- being 50% INR 7,58,87,900/- the original cost paid by the Assessee to M/s Maitri Associates towards acquisition of

leasehold rights of a plot of land. The Assessing Officer was of the view that since the 50% of the leasehold rights in land has been sold to the Assessee, deduction for only 50% of the cost of acquisition of leasehold rights in land can be allowed as deduction to the Assessee.

12. According to the Learned Authorised Representative for Assessee, the Assessing Officer failed to appreciate that the consideration for acquisition of 50% of leasehold rights in the plot of land was monetary consideration of INR 7,58,87,100/- (*determined @ Rs. 11,000/- per sq. mtr of entire plot area of 6898,90 sq. mtrs*) plus the construction cost of development on 50% area retained by M/s. Maitri Associates. The Assessing Officer failed to understand the true import of the terms of Agreement for Joint Development Agreement and has incorrectly and thus, erred in making addition of 50% of the land cost (i.e. INR 3,79,43,950/-). The fact is that total land cost of INR 9,19,00,000/- (INR.7,58,87,900/- + INR.1,60,12,100/-) was paid by the Assessee to M/s. Maitri Associates as substantiated by Ledger Account of cost of plot of land and copies of Bank Statement (placed at pages 100 to 105 of the paper-book).
13. We note that the CIT(A), after considering the above submissions, deleted the addition made by the Assessing Officer. We have perused the Agreement for Joint Development, dated 08.04.2013, the relevant extract of the same reads as under:

" 3. In consideration of the Assignees/Developers agreeing to pay to the Assignors/Original Licensees a monetary consideration of Rs. 11,000/- (Rupees Twenty Thousand Only) per Square Meters, having regards to the area of the said plot being 6898.90 Square Meters the total consideration aggregates to Rs. 7,58,87,900/- (Rupees Seven Crores Fifty Eight Lacs and Eighty Seven

Thousand and Nine Hundred Only) which shall be paid in a manner as mentioned hereinbelow and further agreeing to construct and handover to the Assignors Original Licensees 50% of the total constructed area together with 50% of the total car parking that shall be constructed on the said plot (herein after referred to as Assignor's Area), the Assignors/Original Licensees hereby agree to cause the said Pratibha Patil & 4 Ors to execute a Tripartite Agreement, inter-alia transferring the said Plot in favour of the Assignors individually and jointly with the Assignees/Developers Partnership Firm and to cause them to execute all other Deeds and Documents that shall be required for effective transfer and assignment of the said plot jointly in favour of the Assignor and Assignees herein in the ratio 50:50, and further agree to jointly develop the said plot with the Assignees/Developers by granting them the development rights in respect of the plot. with full right and absolute authority to develop the said plot by constructing building's in accordance with sanctioned building plans and with further full right and absolute authority to sell, transfer, assign, lease, grant license and to other wise dispose of 50% of the total contracted area together with 50% of the total car parking that shall be constructed on the said plot thereafter referred to as the Developer's Area) and to receive and appropriate the entire consideration that shall be received from the sale. transfer, assignment or disposal of premise forming part of the Developer's area." (Emphasis Supplied)

On perusal of the above it is clear that the Assessee was required to pay monetary consideration of INR 7,58,87,900/-. In addition the Assessee was also required to handover 50% of the constructed premises free of cost to the M/s. Maitri Associates. The fact that the Assessee had made actual payments INR 7,58,87,900/- is supported the agreements, ledger account and copies of bank statement. Accordingly, we do not find any infirmity in the order passed by the CIT(A). Further, as rightly held by the CIT(A), the Assessee has capitalized the enhanced cost of land of INR 7,58,87,900/- and not claimed deduction for

the same while computing income for the relevant Assessment Year. Therefore, the question of making any addition to the returned income, in any case, does not arise.

14. In view of the above, Ground No. 3&4 raised by the Revenue are dismissed.

Ground No. 5&6

15. Ground No. 5 is disposed off as being consequential while Ground No. 6 are disposed off as being general in nature.
16. In result, the present appeal by Revenue is dismissed.

Order pronounced on 05.09.2022.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 05.09.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai