

आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1757/PUN/2018
निर्धारणवर्ष / Assessment Year : 2015-16

Good Earth Shelters, 16/1, Parvati Chambers, Sangam Press Road, Kothrud, Pune – 411038. PAN: AANFG 1475 C	Vs	The ITO, Ward-3(4), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri V L Jain – AR
Revenue by	Shri S.P.Walimbe – DR
Date of hearing	28/06/2022
Date of pronouncement	12/09/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee, Good Earth Shelter a partnership firm is directed against the order of Id. Commissioner of Income Tax (Appeals)-3, Pune dated 30.08.2018 emanating from the order under section 143(3) of the Act, for the A.Y. 2015-16. The assessee has raised the following grounds of appeal:

“1. The learned CIT(A) has erred on facts and in law by confirming the disallowance of the claim of expenses of Rs.1,81,97,144/- thereby reducing the valuation of the work in progress to that extent.

2. ‘blank’

3. The appellant craves leave to amend or alter any of the grounds of appeal or add to the same, if deemed necessary.”

2. Briefly stated, the facts of the case are that the appellant assessee is a partnership firm formed on 15/05/2014. It purchased a land vide sale deed dated 13/06/2014 for Rs.13.80 crores from Mrs.Asha Kailash Biyani, Mrs.Radha Vinod Biyani and Mrs.Suchita Bharat Biyani (Vendors) all residing at 'Biyani House'Film City Road Goregaon, Mumbai. In the sale deed the occupation of all the three Vendors is mentioned as "Housewife". As per the Sale Deed the purchaser Good Earth Shelters a registered Partnership Firm was represented by following individuals:

Mrs.Asha Kailash Biyani,

Mrs.Radha Vinod Biyani

Mrs.Suchita Bharat Biyani

Ravindra Ramesh Kasat

Atul Hemraj Mundada

Vaibhav Rajkumar Kothadiya

The assessing officer during the scrutiny noted that assessee had claimed expenditure of Rs.1,83,87,911/- . The assessee submitted before the Assessing Officer (AO) that these expenditures were incurred by the land owners which had been reimbursed by the assessee. The assessee submitted an Unregistered MOU dated 1/06/2015, in support of the said expenditure. The Assessee submitted that the expenditure was incurred for Plan Sanction, etc by the land owners who were also partners of the firm prior to sale of

the land to the Assessee but the assessee vide the said MOU had agreed to reimburse the expenditure incurred by the land owners. Therefore, the assessee claimed the impugned expenditure as contractual liability. The AO disallowed the impugned expenditure, and added the impugned expenditure in the total income of the assessee . The AO also reduced the closing work in progress to the extent of disallowance. The Ld.CIT(A) confirmed the part addition of Rs.1,81,97,144/- [*18387911-190767 which was allowed by CIT(A)*]. Aggrieved by the order of the Ld.CIT(A) the assessee has filed the present appeal.

3. Submission of Ld.Authorized Representative of the Assessee:

The Ld. Authorized Representative (AR) for the assessee submitted a paper book containing 33 pages. The Ld.AR submitted that the expenditures were incurred by the land owners in FY 2013-14. These expenses had been incurred for sanction of plan, Construction, PMC charges etc. The assessee had agreed to reimburse the expenditure vide MOU dated 01/06/2014. Accordingly, the assessee reimbursed this expenditure to the land owners. The Ld.AR submitted that merely the MOU is unregistered or not notarized does not change the liability of the assessee. The AR submitted that there is no legal requirement to register the MOU or Notarized the MOU. The Ld.AR explained that these are business expenditure and hence shall be allowed.

4.Submission of Ld.Departmental Representative(DR):

The Ld.Departmental representative (DR) took us through the Registered Sale Deed dated 17/06/2014 (page 4-16 of the Assessee's Paper Book) to explain that there is no clause in the Sale Deed regarding reimbursement of these expenditures. The clause 3 of the sale deed states that the Vendors have given possession and purchaser have accepted possession of the land on 17/6/2014.

The Ld. DR submitted that the MOU is just a self -serving document and it cannot be relied upon. The DR further submitted that if the MOU was entered on 01/06/2014 then why the same is not mentioned in the Sale Deed dated 17/6/2014, which explains that the genuineness of the MOU is doubtful. The ld. DR invited our attention to the MOU and submitted that the first four pages of the MOU had been signed by only one person and the last page of the MOU had been signed by only two partners of the Firm on behalf of the firm. Thus, all the partners have not signed the MOU on-behalf of the firm, whereas the Sale Deed has been signed by all Six Partners. He also submitted that it is unregistered and not even notarized. Hence it is not a reliable document. Also, the expenditures were incurred in FY 2013-14 when the Assessee partnership firm was not in existence hence the expenditure is not allowable as business expenditure of the firm.

5. We have heard both the parties and perused the records. The undisputed facts are that the Assessee firm was formed on 15.05.2014. It has six partners. The assessee firm vide registered Sale Deed dated 17/06/2014 purchased a land from Mrs. Asha Biyani, Mrs.Radha Biyani, Mrs.Suchita Biyani. The possession of the land was handed over on the same day as mentioned in the Registered Sale Deed.

5.1 The assessee had debited in the profit and loss account of FY 2014-15, expenditure of Rs. 1,81,97,144/- which were actually incurred by Mrs.Asha Biyani, Mrs.Radha Biyani and Mrs.Suchita Biyani for construction, a PMC charges etc in FY 2013-14. The details of these expenditure as submitted by the assessee before the AO , (as appearing in the paper book page 22-27) are as under :

Mrs.Asha Biyani- Rs.74,93,017/- for Project construction cost, Charges paid to Pune Municipal Corpo.

Mrs. Radha Biyani- Rs.63,78,097/- paid to Pune Municipal Corp
Rs.6,98,204/- Construction cost.

Mrs.Sucheta Biyani Rs. 62,78,097/- paid Pune Municipal Corp
Rs.6,98,211 construction cost

All the above expenditure has been incurred between 30-12-2013 and 21-10-2013, except Rs. 1,90,660 which was on 9/6/2014.

5.2 The assessee submitted copies of some of the challans, paid to Pune Municipal Corporation which mentions owner of the land as

Asha Biyani & Others ,it means it does not mention the owner of the land as the Firm-Good Earth Shelter. Thus, the said expenditure had been incurred by Mrs.Asha Biyani, Mrs.Radha Biyani, Mrs.Sucheta Biyani as owner of the land in personal capacity. These expenditures had not been incurred by Mrs.Asha Biyani, Mrs.Radha Biyani, Mrs.Sucheta Biyani for the purpose of the business of the assessee, as at that point of time, the firm was not in existence. These expenditures may have been incurred by Mrs.Asha Biyani, Mrs.Radha Biyani, Mrs.Sucheta Biyani to improve the value of the land or for any other reason. The day when these impugned expenditures were incurred the Assessee firm was not in existence. As pointed out by the AO/CIT(A) and DR that no where in the Sale Deed there is any mention of these impugned expenditures and their reimbursements to be done by the Purchaser i.e., the Assessee Firm. No where in the Sale Deed there is any mention of the MOU which has been relied by the assessee to claim the expenditure. As per the Income Tax Act,only, that expenditure is allowed which has been incurred by the Assessee wholly and exclusively for the business of the assessee. In this case it is a fact that the expenditure was incurred prior to formation of the assessee firm, therefore, there is no question of these expenditure being incurred by the assessee for its business. As far as the contractual liability as claimed by the assessee is concerned, the onus is on the assessee to demonstrate by

documentary evidence that such contractual liability existed. The assessee relied on MOU dated 01/06/2014. The AO has mentioned in the Assessment Order that the Original MOU was never produced before the AO. We have perused the copy of impugned MOU (page 17-21 of Paper Book) and as submitted by the Ld.DR that the MOU was signed on behalf of the Assessee by only by two partners. Even those two partners have not signed all the pages of the MOU. No document has been submitted either before AO/CIT(A) or us to demonstrate that those two partners were duly authorised by the Firm to sign on behalf of the firm. Therefore, the MOU is not binding on the firm. However, the Sale deed has been signed by all the partners and their photos have been pasted on it. Also, all the three vendors have also signed the Sale Deed. As mentioned earlier, the so called MOU does not contain signatures of all the three Vendors, i.e Mrs. Asha Biyani, Mrs.Radha Biyani, Mrs.Sucheta Biyani on all the pages. All these discrepancies explain that genuineness of the impugned MOU is in doubt and the impugned MOU is nothing but a self-serving document. We have already mentioned that the registered Sale Deed which is dated 17/6/2014 does not have any word about the impugned MOU dated 1/6/2014, hence in such circumstances the recitals of the registered documents will prevail over the unregistered MOU. In clause '4f' of the Registered Sale Deed, there is mention that Collector vide order dated 22/4/2014 has

approved conversion of land from Agricultural to Non Agricultural. However, there is no mention in the Registered Sale Deed about the impugned construction, 'Coloumn Excavation' , the expenses of which has been claimed , though the said construction expenses were claimed to have been incurred prior to the registered Sale Deed . Many of the impugned construction expenses were claimed to have been incurred in 2013-2014 where as the Collector gave permission to convert the land into Non-Agricultural on 22/4/2014 so the question how the construction activity could have been carried on an Agricultural land is unanswered.The land was purchased vide Registered Sale deed dated 17/6/2014, therefore, this registered sale deed prevails over the impugned MOU. The cost of land mentioned in the Sale deed includes all the expenditures, if any ,incurred by the owners prior to the sale. Therefore, the claim of the Appellant Assessee firm to allow the amount of Rs.1,81,97,144/- [18387911-190767 which was allowed by CIT(A)] which has been claimed to have been paid to erstwhile land owners is not allowable as expenditure , and the ground number 1 of the appellant assessee is dismissed.

5.3 Ground Number 2 is blank, hence no adjudication is required.

5.4 Ground number 3 is general, since there is no amendment, alteration of grounds, the Ground number 3 is dismissed.

5.5 Accordingly, the Appeal of the Assessee is Dismissed.

Order pronounced in the open Court on 12th September, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th September, 2022/ SGR*/*Sujeet*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.