

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2606/Chny/2018
निर्धारण वर्ष /Assessment Year: 2006-07

**The Asst. Commissioner of
Income Tax,**
Corporate Circle-6(2),
Chennai.

M/s. Singapore Reality Pvt. Ltd.,
Vs. Plot No.K-1, SIPCOT,
Information Technology Park,
Navallur Post, Pudupakkam,
Chennai – 603 103.
[PAN: AAHCS-8420-L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri R. Vijayaraghavan, Advocate
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.09.2022

घोषणा की तारीख /Date of Pronouncement

: 08.09.2022

आदेश / ORDER

Per Mahavir Singh, Vice President :

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.405/2013-14/CIT(A)-15 dated 29.06.2018. The Asst. Commissioner of Income Tax, Company Circle-VI(3), Chennai passed the order giving effect order of CIT(A) vide order dated 02.01.2013.

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2. The CIT(A) against the allowance of following expenses confirmed part of the expenses, but allowed the expenditure u/s. 37 of the Income Tax Act, 1961 (hereinafter 'the Act') after considering the claim of the assessee as commencement of business in the first round i.e., in ITA No.59/10-11 vide order dated 18.06.2012 by observing in para 5.2 as under:

*"5.2 The AR also relied on various judgements cited in page 62 to 66 of the paper book to submit that the business of the appellant had commenced and hence is eligible for the expenses claimed sis deduction in the process of calculation of loss under the head profits and qains of business, I have carefully considered the submissions of the AR. As per agreement and MoU signed the appellant company was allotted a land of 104.71 acres for construction of 6000 housing units and the appellant took possession of the land and also carried out other activities such as mobilization of funds, engagement of employees, construction of model flats, earth filling and leveling of land acquired and installation of block production equipment and generators. The nature of expenditure claimed by the appellant is predominantly revenue in nature as could be seen from the profit and loss account. The only ground on which the AO disallowed the claim of loss incurred to be carried forward was on account of the appellant not having carried out the activity of construction of flats which is the main objective of the appellant's business. The AO has not disputed the fact that the appellant was prevented from carrying out the business due to the Hon'bie Madras High Court direction to maintain status quo as to the title and possession of land pending further order from the Court. Therefore I hold that the expenditure incurred by the appellant is allowable as business expenditure as the appellant has commenced business by carrying out various activities and only on account of reasons beyond its control it could not proceed further-However as the loss has been disallowed in toto on the ground that the business has not commenced by the AO, I direct the AO to examine the expenditure claimed in detail, and allow only those expenditure which are allowable under Section 37 as considering the nature of business of the appellant certain expenditure may require to be capitalised. These grounds of appeal are **partly allowed.**"*

3. The Ld. counsel for the assessee now stated that the revenue never challenged the finding of CIT(A) in first round and that has become final and now the same cannot be challenged while giving effect to the order of the A.O. We noted that in this appeal also, the CIT(A) noted this fact and observing in para 4.3.2 to 4.3.3 as under:

“4.3.2. The appellant is a subsidiary of a Singaporean company. It bought land at Sireuseri on the outskirts of Chennai with an intention to develop township. However, the Hon'ble High Court stayed its business operation and therefore, the appellant could not proceed further. During the course of its business operation, the appellant had incurred which were disallowed by the AO. In the first round of appeals, the CIT(A), in all the four assessment orders, had directed the AO to allow revenue expenditure allowable u/s 37 after considering the appellant's nature of business, in which certain expenditure may be required to be capitalized. The CIT(A)'s direction has been reproduced under para 4.2. It is pertinent to mention that both the appellant and the Department accepted the CIT(A)'s orders. However, while giving effect to the CIT(A)'s direction, the AO has selectively allowed certain heads of expenditures. The AO has not discussed in the order giving effect to the CIT(A)'s direction why other expenditures have not been allowed. It is apparent from the AO's orders that the appellant v/as not offered an opportunity of being heard before disallowing the expenditures claimed in the Return of Income. It is also pertinent to mention that the AO had wrongly allowed certain expenditures which were already disallowed by the appellant itself. After furnishing all the relevant particulars, the appellant's AR has submitted its main plea that all the expenditures which are allowable u/s 30 to 37 should be allowed. The appellant has also made an alternate plea that, if the expenditures are not allowed u/s 30 to 36, the same may be allowed u/s 37.

4.3.3. I have considered both the points of view and perused the CIT(A)'s orders which have been accepted by both the appellant and the Department. In the CIT(A)'s orders, there is no mention of allowing the expenditures u/s 30 to 36. The CIT(A)'s direction is to allow revenue expenditure only u/s 37 of the IT Let. After considering the CIT(A)'s direction and the appellant's submission during the appeal proceedings before me, the AO is directed to allow the following revenue expenditure allowable u/s. 37:”

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4. Once, the fact is that the assessee's business has commenced, the CIT(A) has rightly allowed the claim of the assessee. Hence, we do not interfere on the findings of CIT(A).

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 08th September, 2022.

Sd/-
(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य /Accountant Member

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 08th September, 2022.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF