

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 3418/MUM/2017
Assessment Year: 2011-12
&
ITA No. 3419/MUM/2017
Assessment Year: 2012-13**

Green Twig Estate Management
Pvt. Ltd.,
C/o. D.C. Bothra & CO. LLP (CA)
(formerly known as D.C. Bothra &
Co.) 297, Tardeo Road, Wille
Mansion, 1st floor, Opp Bank of
India, Nana Chowk,
Mumbai-400 007.

PAN No. AAECG 1617 Q
Appellant

ITO-2(1)(4),
Aayakar Bhavan, 5th floor,
M.K. Road,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. Rajkumar Singh
Revenue by : Mr. Manoj Kumar, CIT-DR &
Mr. Hoshang B. Irani, DR

Date of Hearing : 28/07/2022
Date of pronouncement : 29/09/2022

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders, both dated 23/03/2017, passed by the Ld.



Commissioner of Income-tax(Appeals)-3, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12 and 2012-13 respectively. As common issue in dispute is involved in both these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First we take up, the appeal for assessment year 2011-12. The grounds raised by the assessee are reproduced as under:

- 1. That the Id. C.I.T. (Appeals) has erred in confirming the disallowance (reduction) made & denial of carry forwarding claim of Closing Work in Progress (WIP) of Rs. 2,99,40,000/- by the Id. A.O. without properly appreciating the facts of the case & law. The Appellant prays that disallowance of closing WIP & denial of carry forward claim of the same being wrong on facts & bad in law therefore same may kindly be deleted.*

3. Briefly stated facts of the case are that the assessee company was incorporated on 03/02/2011 with two shareholders i.e. Sh Ashwin L. Shah and Smt Kalpana Shah, with the main purpose of redevelopment of a Property namely "Kirti Chambers", located at



Fort, Mumbai. The assessee failed to file his regular return of income for the assessment year under consideration i.e. AY 2011-12, therefore the Assessing Officer issued a notice under section 148 of the Income-tax Act, 1961 (in short 'the Act') on 29/10/2013, which was duly served upon the assessee. In response, the assessee filed return of income on 18/02/2014 declaring Nil income. Subsequently, statutory notices under the Act were issued and complied with. In the assessment completed on 31/03/2015 under section 147 read with section 143(3) of Act, the Assessing Officer though assessed the total income at NIL, however disallowed work-in-progress in respect of "Kirti Chambers Property" amounting to ₹2,99,40,000/- and denied carry forward of the same for subsequent years. On further appeal, the Ld. CIT(A) also upheld the disallowance. Aggrieved, the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.



3.1 The sole ground raised by the assessee relates to disallowance of work in progress in respect of Kirti Chambers.

3.2 The facts qua the issue in dispute raised in ground are that the property “Kirti Chambers” was originally standing in the name of M/s Sahib Enterprises, from it was purchased by Sh Ashwan L Shah and Smt. Kalpana Shah (i.e. promoters of the assessee company) through a registered deed of conveyance dated **04.12.2006**, which was held by them as an individual investment and after having the decision to exploit the property commercially, it was transferred to the assessee company by way of a registered deed of conveyance dated 21/06/2011. The property acquired by the company was fully tenanted by recorded as well as unrecorded occupiers (unauthorized persons to whom the tenements occupied by the recorded tenants were illegally sublet). Even pending to the formation of the assessee company and ultimate transfer of the building in reference, the abovenamed promoters holding the title,



had filed the suit against the unlawful occupiers of the tenants in the Court of small causes at Mumbai for their eviction and negotiated with some of the recorded and unrecorded tenants for surrender of their tenancy/occupation claim by payments of suitable consideration till 31/03/2011. The original promoters inducted M/s Vedang Builders LLP and others to provide finance and expertise towards development of the property under redevelopment scheme.

4. The Assessing Officer observed work-in-progress of ₹3,05,33,250/- in the balance sheet under the head “inventories”. It was claimed by the assessee that said entry was in respect of the stamp duty paid and registration cost in respect of the purchase including cost paid towards acquisition of tenanted premises. The breakup of said work in progress submitted by the assessee has been reproduced by the Ld. CIT(A) in para 7.3 of the impugned order as under:

Particulars	Amount (in ₹)
Payments for tenancy purchase	



M/s Asian Machinery	95,40,000/-
M/s Zuber Investmest Ltd.	1,70,00,000/-
Shirish Modi	9,00,000/-
Phoolchand N. Patel & Others	25,00,000/-
	2,99,40,000/-
Stamp Duty/Regn. Charges etc.	5,93,250/-
Grant Total	3,05,33,250/-

4.1 It was claimed by the assessee that M/s Vedang Builders LLP made payments of ₹2,99,40,000/- on behalf of the assessee company for purchase of tenancy rights of shop/offices in Kirti Chambers from above mentioned persons, though owner of the said property were still Mr Ashwin L Shah and Smt Kalpana Shah (i.e. prior to incorporation of the assessee company).

4.2 The Assessing Officer observed that M/s Vedang Builders LLP had purchased tenancy rights of shop (Old No. 1 and New No. 3) admeasuring 304 ft² in Kirti Chambers from M/s Asian machinery at nil cost *vide* registered agreement dated 30/12/2010. Similarly, *vide* registered agreement dated 12/01/2011, M/s Vedang Builders LLP had purchased rights of the office admeasuring 405 square fit in “Kirty Chambers” from m/s Zuber Investments at Nil cost.



4.3 Whereas, the assessee company also submitted a non-registered (document) dated 27/03/2013 relating to surrender of tenement, wherein it was mentioned that M/s Vedang builders LLP had paid ₹95,40,000/- and ₹1,70,00,000/- to M/s Asian Machinery and M/s Zuber investments Ltd respectively for acquisition of tenancy rights.

4.4 The claim of the assessee is that payment has been made for acquisition of tenancy rights as noted in the unregistered agreements, whereas the claim of the Assessing Officer is that as per registered agreements, no payment has been made for acquisition of the tenancy rights and therefore, he disallowed the work-in-progress to the extent of ₹2,99,40,000/-. The Ld. CIT(A) upheld the disallowance observing as under:

“7.7 I have perused the facts of the case & appellant's submissions carefully. First of all, I find it prudent to understand the accounting entries made in appellant's books. The ledger statement of Vedaang Builders LLP in appellant's books from 01.04.2010 to 31.03.2011 [Page 85 of Paper book] shows following entries:



Date	Particulars	Type	Debit	Credit
30.12.2010	By Kirit Chambers Property A/c	Journal		1,97,210/-
	By Kirit Chambers Property A/c	Journal		110/-
31.12.2010	Tenant Purchase A/c (Being paid to Asian Machinery on behalf of Green Twig received from Vedaang)	Journal		95,40,000/-
	By Kirit Chambers Property A/c	Journal		3,0400/-
12.01.2011	Tenant Purchase A/c (Being paid to Zuber Investment on behalf of Green Twig received from Vedaang)	Journal		1,70,00,000/-
	By Kirit Chambers Property A/c	Journal		30,420/-
	By Kirit Chambers Property A/c	Journal		3,35,000/-
15.01.2011	Tenant Purchase A/c (Being paid to Shirish Modi on behalf of Green Twig received from Vedaang)	Journal		9,00,000/-
18.02.2011	Tenant Purchase A/c (Being paid to Fulchand N. Patel & Others on behalf of Green Twig received from Vedaang)	Journal		25,00,000/-
	Total			3,05,33,140/-

I find that the appellant company was incorporated on 02.03.2011, hence technically it did not exist before that date. Therefore, the entries passes in appellant's accounts before that date is nothing but a back dating of entries, which is not acceptable.

7.8 I find that the corresponding debit entries are not passed in books of counter party M/s Vedaang Builders LLP on given dates. The appellant has submitted confirmation of its account in books of Ms Vedaang Builders LLP for the period from 01.04.2010 to 31.03.2015 [Page 89 of Paper Book]. The said account does not show any transaction during FY 2010-11. The alleged payments on behalf of the appellant of Rs. 95,40,000/-, Rs. 1,70,00,000/-, Rs. 9,00,000/-, & Rs. 25,00,000/-are debited to appellant's account by journal entry only on 01.04.2014, i.e. after a long period of more than 3 years since



close of FY 2010-11 in which entries are passed in appellant's books. Also, it is observed that the date of corresponding entry passed in books of Vedaang Builders LLP, i.e. 01.04.2014, falls soon after the date of filing return by the appellant in response to notice us 148, i.e. 28.03.2014. It cannot be ruled out that the fear of reconciliation issue arising in said assessment proceedings would have prompted the appellant to get passed said entry in books of Vedaang Builders LLP.

7.9 It is clear that the appellant had not made any direct payment to parties for vacating the tenancy rights of land owned by Shri Ashwin Shah/ Smt. Kalpana Shah, the two shareholders of the appellant company. Neither, the said shareholders had made payment on behalf of the appellant company pending formation of the appellant company. The payments are allegedly made by a third party M/s Vedaang Builders LLP, and that too are not debited to appellant company's account during FY 2010-11 in books of said party. In such case, the appellant's claim of Rs.2,99,40,000/- towards cost of WIP remains unilateral, and hence unsubstantiated.

7.10 The AO has contended that the unregistered document dated 27.03.2013 submitted as proof of tenancy purchase for Rs. 2,99,40,000/- has no evidentiary value. The AO has stated that the said document does not bear any signature/ confirmation of the alleged recipient of the proceeds for transfer of rights. I find that while submitting various other agreements/ documents in Paper Book, the appellant has not submitted a copy of this agreement during present appellate proceedings. If at all the appellant wanted to rely upon said document, it should have at least submitted a copy of the same.



7.11 *The appellant has relied upon the judgment of Hon'ble Gauhati High Court in the case of Narsingdas Surajmal Properties (P) Ltd. v. CIT [1981] 127 ITR 0221. The Hon'ble High Court has held that non-registration of a compulsory registrable document relating to immovable property renders the document inadmissible as evidence of a transaction affecting immovable property, but it may be admitted and made use of as evidence of collateral facts or for any collateral purposes or to prove a lessee's possession of tenancy. I find that the facts of said case are distinguishable. In present case, the appellant has not even bothered to produce a copy of the unregistered agreement dated 27.03.2013 which it wanted to use as an evidence. Moreover, the AO has observed that such agreement did not bear any signature/ confirmation of the alleged recipients of the proceeds for transfer of rights. Also, the said agreement would not be backed by entries in books of counter party M/s Vedaang Builders LLP, as discussed in preceding paras. Looking at these circumstances, any such agreement even if produced would not find any evidentiary value.*

7.12 *The appellant has heavily relied upon two "Declaration", i.e. (i) Declaration dated 30.12.2010 showing payments of Rs. 95,40,000/- by Vedaang Builders LLP to partners of Asian Machinery [Page 11-14 of Paper Book], & (ii) Declaration dated 12.01.2011 showing payment of Rs. 1,70,00,000/- by Vedaang Builders LLP to Zuber Investments [Page 37 to 40 of Paper Book]. I find that the said documents are executed on stamp paper of Rs. 100/- each, on same date on which respective "registered" agreements were executed by these parties showing Nil consideration for transfer of tenancy rights. The reason given by the AR in written submissions for not disclosing respective consideration in registered agreements is that the said*



consideration exceeded stamp duty value. Therefore "to save the stamp duty as Prudent businessman" actual consideration agreed and paid at the time registration of the purchase documents of tenancy rights transferred from the above referred parties were not incorporated in the said transfer documents which was not required to be disclosed mandatorily. I find such practice not only to be highly unethical, but also having used as a tool to evade stamp duty payment. If such practice is permitted. then there would be no sanctity of law and everyone would resort to such dubious practices. Also, in my opinion, an unregistered agreement cannot supersede the terms of a registered agreement on very same subject matter. Therefore, any payment by Vedaang Builders LLP to these parties towards purchase cost of tenancy rights is unsubstantiated.

7.13 As regards the other two payments of Rs. 9,00,000/- to Shirish Modi & Rs.25,00,000/- to Phoolchand N. Patel & Others claimed as made by Vedaang Builders LLP on behalf of the appellant, the appellant has submitted on Page 65 to 82 of Paper Book, an agreement dated 10.12.2013 for surrender of tenements executed by (i) Mr. Kishor Mittal, (ii) Mr. Ashwin Shah/ Mrs. Kalpana Shah, (iii) Green Twin Estate Management Pvt. Ltd. (the appellant herein). Following observations are made from said agreement:

(i) The said agreement states that the third declarant (the appellant) has paid to the Occupant a sum of Rs. 9,00,000/- by pay order bearing No. 016550 issued by the National Co-op. Bank Ltd., Nariman Point Branch. The copy of payorder however shows instrument no. as 197275 and name of bank as Dhanlaxmi Bank, which is drawn in favour of Kamal Funchand Patel.



(ii) The said agreement further states that in a second acquisition of tenancy, the Third Declarant (appellant) has paid to the Occupant a sum of Rs. 25,00,000/- by three pay orders bearing Nos. 197273, 197274 & 197275 all issued by Dhanlaxmi Bank Ltd. The said payorders are drawn by said bank in favour of Shefali Kamal Patel (Rs. 8,00,000/-), Deepika Kamal Patel (Rs. 8,00,000), & Kamal Funchand Patel (Rs.9,00,000/-). The said agreement refers to some Consent Terms executed with said parties in the Court of Small Causes at Mumbai, copies of which are given by the appellant. I find that in said consent terms, nowhere the payment of any sum towards surrender of tenancy rights are mentioned. Also, as discussed in preceding paras, the appellant's books show such payment allegedly made by Vedaang Builders LLP, which is not appearing as a party to this agreement. For these reasons, it appears that this agreement showing payment of Rs. 9,00,000/- & Rs. 25,00,000/- seems to be self contradictory, and hence cannot be accepted as evidence towards any such payment having made by the appellant company towards cost of WIP.

7.14 The aforesaid facts of the case make it clear that the appellant has grossly filed to substantiate the payments aggregating to Rs.2,99,40,000/- towards cost of WIP. Hence, I confirm the disallowance made of said amount as reduction in WIP cost in hands of the appellant. In view of the same, Ground No. 2 is dismissed."

5. The main reasons cited by the lower authorities for disallowance are as under:



- (i) The unregistered document submitted by the assessee did not bear any signature/confirmation of the alleged recipient of the proceeds of transfer of tenancy rights. It was not having any legal or evidentiary value and was merely self-serving document, prepared to inflate the amount of work in progress.
- (ii) The cost of acquisition of tenancy right which had been mentioned as nil in the registered document for transfer of tenancy rights, had been duly confirmed by the owner of said premises.
- (iii) The entries in books of accounts of the assessee company in respect of work in progress are for the period when the company was not in existence itself. Corresponding entries in the books of accounts of M/s Vedang Builders LLP were not passed on given dates as evident from the confirmation of accounts of the assessee in the books of



M/s Vedang Builders LLP and entries have been passed on 01/04/2014 by way of a journal entry which is after the issue of notice under section 148 to the assessee on 28/03/2014.

- (iv) Copy of the unregistered document was not submitted before the Ld. CIT(A)
- (v) The assessee placed reliance on the declarations executed on the stamp paper of ₹100/- on same date on which respective registered agreements were executed by these parties showing nil consideration, but in declarations payment of ₹95,40,000/- was shown as received by M/s Asian Machnary and ₹1,70,00,000/- was shown as received by M/s Zuber Investment Ltd. regarding not disclosing the respective consideration in the registered agreement, it was explained by assessee that to save the stamp duty as prudent businessmen actual consideration



agreed and paid at the time of registration of the purchase of tenancy rights was not disclosed. The Ld. CIT(A) held this claim of the assessee is highly unethical and without sanctity of law.

- (vi) Regarding the payment of ₹9,00,000/- to Shirish Modi claimed by M/s Vedang Builders LLP on behalf of the assessee was disallowed by the Ld. CIT(A) after noting discrepancy of instrument No. i.e. Payorder , through which payment was claim to be made.
- (vii) Regarding payment of ₹25,00,000/- to Phoolahand N Patel and others by M/s Vedang Builders LLP on behalf of the assessee was also disallowed by the Ld. CIT(A) after noting that the consent terms agreed between the parties before the Court of small causes at Mumbai, nowhere the payment of any sum towards purchase of the tenancy right was mentioned.



5. Before us, the Ld. counsel of the assessee has filed an application for admission of additional evidence under Rule 29 of ITAT Rules, 1963. In the said application the assessee has filed a certified copy of duly executed and notarized memorandum of understanding dated 14/09/2010 entered into by Shri Ashwin L Shah and Smt. Kalpana Shah, the landlords with M/s Vedang Builders LLP containing the terms and condition including payment to be made up to ₹12 crores to the tenants/occupants by Vedang Builder LLP. The Ld. counsel requested that said additional evidence is important for adjudicating the issue in dispute and accordingly submitted to restore the issue in dispute to the file of the Assessing Officer.

6. The Ld. DR on the other hand relied on the order of the lower authorities.

7. We have heard rival submission of the parties and perused the relevant material on record. We find that issue in dispute here is in



relation to the genuineness of the amount of work in progress, which has been claimed by the assessee. The lower authorities has mainly rejected the genuineness of the expenditure incurred against payment to tenanted authorized/unauthorized dwellers (i.e. which has been acclaimed as work-in-progress) mainly on the ground that in the registered deed of transfer, purchase value was recorded at nil as compared to the value recorded in unregistered agreements and declaration of seller parties. In our opinion, the registered or unregistered sale agreement are in the nature of the agreement between the parties and in law those agreements can we challenged by the parties and it is not within the powers or authority of the Income-tax Authority to challenge or dispute the terms and condition mentioned in those agreements. The Income-tax authorities are authorized to examine the expenditure incurred from the angle of section 37(1) of the Act so as to verify whether the expenditure has been incurred wholly and exclusively for the



purpose of the business of the assessee. The onus was on the assessee to establish that expenditure was incurred wholly and exclusively for the purpose of the business of the assessee. In the case, the Assessing Officer was required to verify two things. Firstly, whether the payments has been made by the assessee or on behalf of the assessee to the seller parties. Secondly, the payment has been made for the purpose of the business of the assessee. Since in the case it is claimed by the assessee that payments have been made for purchase of legal or illegal tenanted premises, therefore the assessee was required to substantiate with documentary evidence to the effect that the payment have made to the seller parties and that too for the purpose of purchase of relevant properties. The assessee attempted to substantiate with the help of non-registered agreement and declaration of the seller parties. But in the facts of the case, the assessee was required to produce those parties before the Assessing Officer for confirmation of the facts stated in their



affidavits and to show deposit of said payment in the bank accounts.

The seller parties were also required to show from Income-tax Returns filed that payments have been shown as income from sale/transfer/vocation of tenanted premises.

7.1 In view of additional evidence filed before us, which goes to the root of matter, we feel appropriate to restore the issue in dispute to the file of the Assessing Officer for adjudicating afresh after taking into consideration the evidences, which would be filed by the assessee. It will be the responsibility of the assessee to produce the seller parties before the AO and cooperate in disposal of the matter. The AO is at liberty to carry out enquiries as deemed fit for disposal of the issue in dispute. The ground of appeal is accordingly allowed for statistical purposes.

8. In ITA No. 3419/Mum/2017 for AY 2012-13 also identical issue of genuineness of work-in-progress is involved, therefore,



following our finding in AY 2011-12, the grounds raised in AY 2012-13 are allowed for statistical purposes.

9. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open Court in 29/09/2022.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 29/09/2022

Rahul Sharma, Sr. P.S.

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//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai