

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2399/Del/2019
(Assessment Year: 2015-16)

Idea Estate Pvt. Ltd,
22-A, Janpath, New Delhi

(Appellant)

Vs. DCIT,
Circle-12(1),
New Delhi

(Respondent)

PAN: AAACI3158E

Assessee by :

None

Revenue by:

Shri Anuj Gupta, Sr. DR

Date of Hearing

07/11/2022

Date of pronouncement

15/11/2022

ORDER

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 07.01.2019 of Ld. CIT(A)-4, New Delhi (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 25.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Dy. CIT, Circle-12(1), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee is a company incorporated under the Companies Act, 1956 and engaged in the business of Real Estate Developer & Promoters, Trading, construction and letting out various properties on lease/rental basis. The assessee filed its return on 29.09.15 declaring an income of Rs. 1,01,11,179/- comprising of income from business and profession and income from house property. The return was processed and the case was picked up for scrutiny under CASS and notice u/s 143(2) was served

upon the appellant alongwith questionnaire. The Authorized Representative of the assessee company attended the proceeding and filed the details called for. The assessment was completed on disallowing the business loss of Rs. 1,12,49,102/- against the rental income on the ground that there was no business receipts/business activity during the period under assessment. Aggrieved by the order of Ld. Deputy Commissioner of Income Tax, Circle 12(1) the Appellant went into appeal before the Hon'ble Commissioner of Income Tax (Appeals)-4 New Delhi who allowed the interest expenses amounting to Rs. 40,91,116/- incurred towards acquisition of property at Janpath New Delhi u/s 24(b) of the Act alongwith bank charges, interest on car loan, depreciation expense, director remuneration, audit fees, fees rates and taxes and vehicle running and maintenance, however disallowed the TDS written off on rent which was earlier allowed by assessing officer and interest and penalty on late deposit of service tax. The interest on loan taken for advance given for project amounting to Rs. 53,51,806/- was also disallowed treating it as capital expenditure. Aggrieved by the Appellate order u/s 250(6) and grounds of decision. That the appellant has preferred an appeal before us raising following grounds of appeal:-

- "1. That the order is bad in law and against the fact of the case.*
 - 2. That Ld. CIT(A) has erred in disallowing of written off TDS on rental income which was earlier allowed in the assessment order u/s 143(3) of Income Tax Act, 1961..*
 - 3. That Ld. CIT(A) has erred in disallowing the interest on loan taken for advances given for project amounting to Rs. 53,51,806/- and treating it as capital expenditure."*
3. Heard and perused the record.
 4. At the time of hearing on 07.11.2022 none appeared on behalf of the assessee. Notices issued by registered post have been received back with a report "left". No other address of the assessee is available.

5. Arguments of the Id DR were heard who supported the findings of the Id Tax Authorities below.

6. Appreciating the matter it can be observed that the Id Tax Authorities below have disallowed written off TDS on rental income it was earlier allowed in the assessment order u/s 143(3) of the Act on the basis that since the expenses pertain to the income under the head house property and does not pertain to income under the head business and profession therefore, same is not allowable u/s 37 of the Act nor u/s 36(1)(vii) of the Act. In this context it can be observed that the assessee had raised the plea that The TDS deducted but not paid by the tenant should be treated as unrealised rent in terms of section 24(1)(x) of the Act and allowed as deduction from the "Income from house property" in the subsequent years. The similar view is taken in the case Ashok Kumar, HUF v. Assistant Commissioner of Income Tax, ITAT Delhi Bench [1998] 65ITD 352 (DELHI) and CIT v. Madho Pd. Jatia [1976] 105 ITR 179 (SC) (Copy Enclosed).

7. However, the Id CIT(A) while dealing with the issue without distinguishing the judgment relied by the assessee and the reasons for not treating the amount as unrealized rent. There has been no reasons recorded for giving finding that why this amount is not allowable expenses u/s 24(1)(x) of the Act as specifically claimed. Accordingly, ground No. 1 is decided in favour of the assessee for statistical purposes. The Id CIT(A) is directed to give a reasoned finding on the aforesaid plea and law relied by the assessee.

8. In regard to ground of disallowance of interest of loan taken for advance given for project and treating it as capital expenditure it can be observed that the assessee has claimed that it had advanced for Bangalore Project and Gurgaon Project and the loan interest amounting to Rs. 5351806/- was paid towards advance given for the project. The Id CIT(A) observed that the expenditure on interest requires to be

capitalized to the expenditure on the said project and is not allowable as revenue expenditure. There appears to be no error in the findings as a matter on record suggests that the assessee company had entered into collaboration agreement for development of land and primarily the company was earning rental income. Thus, the interest paid for upcoming projects which was used to be rental has been rightly capitalized. There is no error in the findings of the Id CIT(A), thus, the ground is not sustainable. Consequently, the appeal is allowed partly.

Order pronounced in the open court on 15/11/2022.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 15/11/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi