

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.826/Chny/2020
निर्धारण वर्ष /Assessment Year: 2016-17

M/s.Casa Grande Civil –
Engineering Pvt. Ltd.,
5th Floor, NPL Devi, LB Road,
Thiruvanmiyur,
Chennai-600 041.
[PAN: AAFCC 5227 K]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner –
of Income Tax,
Corporate Circle-1(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.G.Reddi Prakash, A.C.A.
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 02.11.2022
घोषणा की तारीख /Date of Pronouncement : 16.11.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 06.08.2020 and pertains to assessment year 2016-17.

2. At the outset, we find that there is a delay of 2 days in appeal filed by the assessee. During the course of hearing, when defect was brought to the notice of the learned AR present, he has submitted that delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19 infections and in view of the Hon'ble Supreme Court

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suo motu Writ Petition No.3 of 2020, if the period of delay is covered within the period specified in the order of the Apex Court, then same needs to be condoned in view of specific problem faced by the public on account of Covid-19 pandemic.

2.1 The learned DR, on the other hand, fairly agreed that delay may be condoned in the interest of justice.

2.3 Having heard both sides and considered reasons given by the learned AR, we find that the Hon'ble Supreme Court in ***suo motu*** Writ Petition No.3 of 2020, has extended limitation applicable to all proceedings in respect of Courts and Tribunals across the country on account of spread of Covid-19 infections w.e.f. 15.03.2020, till further orders and said general exemption has been extended from time to time. We further noted that delay noticed by the Registry pertains to the period of general exemption provided by the Hon'ble Supreme Court extending limitation period applicable for all proceedings before Courts and Tribunals and thus, considering facts and circumstances of the case and also in the interest of natural justice, we condone delay in filing appeal filed by the assessee.

3. The assessee has raised the following grounds of appeal:

1. The order passed by the Learned CIT (A), is opposed to law and contrary to the facts and circumstances of the case and is therefore unsustainable.

2. The Learned CIT (A) erred in upholding the order of the Learned Assessing Officer, without fully appreciating the facts of the case, supporting evidences and submissions made by the appellant during the course of assessment and first appellate proceedings.

3. The Learned CIT(A) erred in stating that the actual cost incurred for the acquisition of land is NIL.

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4. *The order of the Learned CIT(A) is erroneous and contains mistakes apparent on record to the extent that in Para 4.7 of the said order in page no 11, the submission of the appellant on actual cost incurred on purchase of land along with the supporting evidences is reproduced while in para 6.4 in Page no 13 it is held that actual cost incurred on land is NIL. The Learned CIT(A) erred in upholding the order of the learned assessing officer on the only contention that the appellant has not incurred any cost on the acquisition of land.*

Without prejudice to the above grounds of appeal raised, the appellant raises the following grounds before the Honourable ITAT.

5. *The Leaned AO erred in disallowing the amount of Rs.6,29,77,153/- which were incurred for the purpose of the business, by stating that no revenue is recognized for the project and the indirect expenses attributable to the project are to be capitalized and not to be claimed as revenue expenditure.*

6. *The Learned AO failed to appreciate that the selling cost and general administrative cost are not to be included in the project cost for computation of percentage of completion and these are the costs which are wholly and exclusively incurred for the purpose of the business of the appellant as per section 37(1) of the Act and has to be allowed accordingly.*

7. *The Learned AO failed to appreciate the fact that the appellant being in the real estate business is required to comply with the principles laid down by the Institute of Chartered Accountants of India in the Guidance Note on Accounting for Real Estate Transactions.*

8. *The Learned AO erred in disallowing the other expenses on the pretext that no revenue was offered for tax in the year under consideration, while the appellant was not required to offer any revenue under the percentage of completion method.*

9. *The Appellant seeks your leave to add, alter, amend or delete any grounds urged, at the time of hearing.*

4. The brief facts of the case are that the assessee company is engaged in the business of real estate development promotion and construction of buildings. The assessee company under took civil construction of work for its group companies from the AY 2016-17 onwards. The assessee has also started a real estate project called 'Aristo' on its own apart from construction services provided to group companies. The assessee filed return of income for the AY 2016-17 on 17.10.2016 declaring a loss of Rs.2,00,54,050/-. During the course of assessment proceedings, the AO noticed that the assessee has debited huge expenditure under the head 'advertisement expenses, sales promotion expenses, finance cost and professional & consultancy fee and thus, called upon the assessee to furnish necessary details, including nature and purpose of said expenses. In

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response, the assessee submitted that during the financial year relevant to the AY 2016-17, the assessee has offered Revenue from operations of construction services to its group companies. However, no Revenue is offered from real estate segment which is commenced its activities during the impugned financial year. The assessee further submitted that it is following 'Percentage of Completion Method for Accounting' to recognize Revenue from real estate segment and also following 'Guidance Note on Accounting for Real Estate Transactions' issued by the Institute of Chartered Accountants of India (in short "ICAI") and as per said Guidance Note, Revenue can only be recognized if certain conditions are satisfied and as per said conditions, if construction expenses exceeds 25%, then only Revenue from operations should be recognized. Since, construction in progress which is less than 25% prescribed for recognizing Revenue, the assessee could not recognize Revenue from real estate segment. Further, all expenses relatable to project including construction expenses and common expenses relatable to project, has been capitalized and kept in work-in-progress. However, general administration and selling expenses has been debited to P & L A/c., because, they cannot be debited to project expenses. The AO, however, was not convinced with the explanation of the assessee and according to the AO, the assessee has not commenced its business activities for real estate segment, which is evident from the fact that no Revenue has been offered from real estate segment and thus, opined that selling expenses and other general administrative expenses

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debited to P & L A/c, cannot be allowed as deduction. Therefore, disallowed advertisement expenses, professional & consultancy fee, finance cost and sales promotion expenses and added back to total income. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A), for the reasons stated in their appellate order dated 06.08.2020 rejected the arguments of the assessee and sustained disallowance of expenses. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) erred in upholding the disallowance of various expenses ignoring the fact that the assessee has rightly debited the selling expenses and other general administrative expenses to P & L A/c, even though, all project expenses have been kept under work-in-progress account, because of not satisfying the conditions for recognizing Revenue from operations. The Ld.Counsel for the assessee referring to 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI and also AS-2 issued by ICAI for valuation of inventories submitted that, as per 'Guidance Note on Accounting for Real Estate Transactions', project cost includes cost of land and cost of development rates, borrowing cost and construction and development cost. However, it does not include general administrative cost and selling cost. He further referring to AS-2 issued by ICAI submitted that for the purpose of valuation of inventories selling and distribution cost needs to be excluded. Therefore, the assessee has followed AS-2 and 'Guidance Note

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on Accounting for Real Estate Transactions' while preparation financial statement and has rightly debited selling expenses to P & L A/c. The Ld.CIT(A) without appreciating the facts rejected the arguments of the assessee and uphold the additions made by the AO.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that in order to allow any expenditure, the business of the assessee should be commenced. In this case, the business of the assessee was not commenced which is evident from the fact that no Revenue from operation, from real estate segment was offered to tax. Therefore, the AO has rightly disallowed expenses and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee is into the business of civil construction for group companies, has commenced a standalone real estate project called 'Aristo' in the FY 2014-15 relevant to the AY 2015-16 and has also incurred construction and development cost of Rs.13,00,14,482/- up to Financial Year ending 2015-2016. The assessee claims that if you consider total estimated construction cost of the project, the expenditure incurred up to FY 2015-16 works out to 12.11% which is less than the mandatory requirement of 25% progress as prescribed by 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI for recognizing Revenue. Therefore, the assessee did not recognize Revenue from real estate segment. The AO never disputed these facts. The AO had also not been disputed the fact that the assessee has debited

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cost of land and other project expenses, including construction expenses to project cost and debited into the project work-in-progress accounts. The only dispute with regard to advertisement expenses, legal and professional fee, fiancé cost and sales promotion expenses debited into P & L A/c. The AO once again not disputed the fact that these expenses pertains to project 'Aristo', but disallowed said expenses only for the reason that the assessee has not recognized Revenue from operations.

8. We have given our thoughtful consideration to the reasons given by the AO for disallowing various expenses and we ourselves do not subscribe to the reasons given by the AO for the simple reason that in real estate development business, the business said to have been commenced the moment assessee purchases land and starts put up construction. In this case, there is no dispute with regard to the fact that the assessee has purchased land and also spent huge amount for construction of building which works out to 12.11% of total estimated project cost. Therefore, there is no merit in observations of the AO that the business of the assessee has not commenced for the impugned assessment year.

9. Having said so, let us come back to the observations of the AO for disallowing various expenses. It is an admitted fact that the assessee is following 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI for accounting income and expenditure. As per said Guidance Note, the assessee needs to follow 'Percentage Completion Method' for recognizing Revenue. The Guidance Note further stipulates that for

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recognizing Revenue, at least 25% progress should be there in the project. If at all amount spent by the assessee for the project including cost of land is less than 25%, then question of recognizing Revenue from said project does not arise. Therefore, the assessee by following the Guidance Note issued by the ICAI has debited all project expenses, including cost of land and cost of development expenses, borrowing cost and construction and development cost to project work-in-progress account, but expenses like general administrative cost and selling cost, has been debited to P & L A/c as per Guidance Note issued by the ICAI and which is further strengthened by AS-2 issued by the ICAI for valuation of inventories, where it suggest that selling and distribution cost should not be part of cost of inventories. Therefore, we are of the considered view that there is no error in the method of accounting followed by the assessee to account project expenses, selling and general administrative expenses and thus, we are of the considered view that the AO as well as the Ld.CIT(A) erred in disallowing advertisement expenses to P & L A/c, because, it is in the nature of selling expenses. As regards, finance cost of Rs.55,11,271/-, the Guidance Note issued by the ICAI clearly states that borrowing cost should be part of project cost in relation to project. Therefore, the same ought to have been debited to project work-in-progress account, if at all said finance cost relatable to project 'Aristo'. Facts are not clear. Therefore, we set aside the issue to the file of the AO and direct the AO to re-verify the issue to ascertain the facts with regard to whether finance cost amounting to

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Rs.55,11,271/- pertains to this project or it is general in nature allocated to any particular project. In so far as professional & consultancy fees of Rs.16,86,271/-, although, in general, it is in the nature of administrative expenses, but if such profession fees paid to a project specific, then it should be part of cost of project. In this case, once again, facts are not clear whether it pertains to project 'Aristo' or general in nature for a group as a whole. Therefore, the AO is directed to verify and decide the issue in accordance with 'Guidance Note on Accounting for Real Estate Transactions' issued by the ICAI. Similarly, sales promotion expenses of Rs.65,24,538/-, said expenditure definitely is in the nature of selling expenses. Therefore, it cannot be part of project cost and thus, the assessee has rightly excluded from project work-in-progress account and debited to P & L A/c. Therefore, the AO is erred in disallowing sales promotion expenses and thus, we direct the AO to delete addition made towards sales promotion expenses.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 16th day of November, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /**VICE PRESIDENT**

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 16th November, 2022.
TLN

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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