

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1965/Chny/2018
निर्धारण वर्ष / Assessment Year: 2014-15

Assistant Commissioner of
Income-tax,
Corporate Circle-4(1),
Chennai.

(अपीलार्थी/Appellant)

M/s. Mangal Tirth Estate Ltd.,
v. No. 769, Spencer Plaza,
Anna Salai, Chennai – 600 002.
[PAN: AAACM-4614-R]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. P. Sajit Kumar, JCIT
: Shri. N.V. Balaji, Advocate

सुनवाई की तारीख/Date of Hearing

: 29.11.2022

घोषणा की तारीख/Date of Pronouncement

: 31.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-8, Chennai, dated 02.04.2018 and pertains to assessment year 2014-15

2. The revenue has raised the following grounds of appeal:

1. *The order of the Id.CIT(A) is contrary to law and facts of the case.*

2. The Ld. CIT(A) erred in deleting the addition of Rs.9,31,14,608/- made by the AO under the head Capital Gains.

2.1 The Id. CIT(A) erred in deleting the addition made by the AO by accepting the assessee's working ignoring the fact that the AO had arrived at the cost of acquisition based on the annual report furnished in the year 31/03/2004, which is the cost given to M/s. Spencer & Co. Ltd., at Rs.630/- per sq.ft.

2.2 The Id.CIT(A) erred in deleting the addition made by the AO stating that the cost arrived at Rs.630/- per sq.ft. by the A.O. as unscientific and incorrect.

3. The Ld.CIT(A) erred in deleting the disallowance of expenses made by the AO for Rs.27,36,145/-.

3.1 The Id.CIT(A) has failed to appreciate that the assessee contested only about the allowability of expenditure before AO and hence the question of referring the case to DVO does not arise.

3.2 The Ld. CIT(A) has also failed to observe that the expense claimed by the assessee had no nexus with transfer of asset and not an allowable expense while computing capital gains.

3.3 The Ld. CIT(A) failed to note that the assessee had not contested before the Assessing Officer about the stamp value of the asset.

4. For these and other grounds that may be adduced at the time of hearing, prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

3. The brief facts of the case are that, the assessee company has developed a shopping cum office complex called Spencer Plaza in Anna Salai, Chennai and residential complex at Kottivakkam. The company had entered into joint venture agreement (JVA) with M/s. Spencers & Co. Ltd., on

16.04.1987 for development of land measuring 3,30,820.18 sq.ft. As per the JVA, the assessee company has constructed 15,00,000 sq.ft., of building and out of above 1,50,000 sq.ft. was handed over to M/s. Spencer & Co. Ltd. The assessee has sold some units in various assessment years and few units have been converted into investments to derive rental income. During the financial year relevant to assessment year 2014-15, the AO has accepted business income computed by the assessee for sale of one unit. However, in respect of two units, where the assessee has computed capital gains, he has re-worked cost of acquisition of property by taking into account average cost incurred by the assessee for construction of phase I and phase II and has adopted Rs. 912.45 per sq.ft. as against cost adopted by the assessee at Rs. 1255.47 per sq.ft. and computed long term capital gains. The AO had also invoked provisions of section 50C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and adopted deemed consideration for computation of long term capital gains. The relevant findings of the AO are as under:

From the above noting the following points emerged :

1. As on 31.03.1999, Out of 1,50,000 sq.ft. the assessee company had handed over 1,21,000 sq.ft. of constructed space in Phase I to M/s. Spencer & co. Ltd., for cost of Rs.582.30 lakhs. Refer Annexure XII, Point No.,3 to notes on account as

on 31.3.1999. The cost of constructed space handed over to Spencer & Co. Ltd., works out to Rs.481 per sq.ft.(58230000/121000 481.23 per sq.ft.)

2. However, the balance 29000 Sq.ft (150000 -121000 - 29000). was handed over by the assessee to M/s.Spencer & co. Ltd., in the F.yr. 2003-04 - (Refer Annexure XII, Point No.,3 to notes on account as on 31.3.2004) . The cumulative cost of constructed space handed over to M/s. Spencer & Co. Ltd., in Phase I and Phase II was mentioned as 946.39 lacs which works out to Rs.630 per sq.ft.(94639000/150000 = 630.92 per sq.ft.)

3. The assessee has considered the construction of building as stock in trade in the earlier years and also admitted business income after claiming all expenditure from F.yr.1987- 88 to 2003-04. During the year 2004-05, the assessee has converted certain stock to investment. From the above, the assessee was asked to substantiate, also furnish clear cut computation towards the cost of constructed space, why Rs.630/- should not be adopted as cost of construction for the property sold.

4. With reference to the above, the assessee in annexure to letter dt.3.10.2016, has furnished "DETAILS OF STOCK - YEAR WISSE FROM 1.4.2004" (Point Ia),which consist of stock of Phase I, II and the details of which is given as under :

MANGAL TIRTH ESTATE LTD., AY 2014-2015								
Details of Stock-year wise fonn 01.04.2004								
I t	Opening Stock		Transfer of Capital Assets		Disposal of Inventory		Closing Inventory	
	Sqft	Gross Cost	Sq.ft.	Gross Cost	Sq ft	Gross Cost	Sqft	Gross Cost
i								
31 Mar -05	427,230	355,838,253	326,993	273,715,982	26,315	23,953,588	73,922	58,168,683
31 Mar-06			2136	4,425,970	60490	46,521,310	11,296	7,221,403
31 Mar-07					9358	5,563,223	1,938	1,658,180
31 Mar-08					519	391,326	1,419	1,266,854
31 Mar-09					499	376,246	920	890,608
31 Mar-10							920	890,608
31 Mar-11							920	890,608
31 Mar-12							920	890,608
31 Mar-13							920	890,608
31 Mar-14					920	890,608	.	0

In the above, the value of opening stock as on 31.3.2005 was worked out by the assessee as under :

Cost of Opening stock 355838253
 Area in sq.ft. 427230
 Cost per Sq.ft. $355838253 / 427230 = 832.89$ sq.ft.

Out of the above opening stock of 427230 sq.ft., stock to the tune of 326993 sq.ft.at gross cost of Rs.27,37,15,982/- was transferred to capital asset, the cost of which works out to Rs.832.89 per sq.ft. only. The balance of 1,00,237 sq.ft. was treated as inventory/ stock.

In the said letter the assessee has also furnished details of area of investment in the books from 1.4.2004 which is as under :

MANGAL TIRTH ESTATE LTD., AY 2014- Details of Area of Investments in the Books from 01.04.2004.		
31 Mar-04	202,047	177,292,418
31 Mar-05	534,040	487,075,018
31 Mar-06	536,176	491,500,989
31 Mar-07	534,312	490,095,533
31 Mar-08	532,472	490,849,528
31 Mar-09	530,957	489,771,080
31 Mar-10	516,640	489,771,080
31 Mar-11	514,640	471,874,378
31 Mar-12	514,504	471,874,378
31 Mar-13	514,504	471,874,378
31 Mar-14	490,809	440,171,999

"Area of UDS shown as investment - Spencer Plaza:-

The company has transferred certain portions from the work in Progress/Construction cost to its capital assets during the earlier previous years pursuant to decision of the Board of Directors of the company. Since the said units held in investment vide Annexure were not registered as such the area of UDS pertaining to the said portions held in investment is Nil.

It may kindly be observed from the above explanation and reference to past records, that the company had been following uniform policy in method of accounting as regards capitalization in work in progress and with the acceptance of Assessing Officers in the past. The accounts have also been subject matter of both statutory audit and tax audit and passed without any qualification."

4. From The above details furnished, it can be seen that the average cost of investment from 31.3.2004 to 31.3.2014 works out to Rs.912.45 per sq.ft.

5. As against the working of cost of inventory/capitalization of Rs.832.89/912.45 per sq.ft mentioned in para 4 & 5 above, the assessee had adopted Rs.1255.47 per sq.ft as cost of construction while computing capital gain.

6. Though the assessee company in reply dt.28.11.2016 has stated that the assessee company had been consistently following completed contract method of accumulating the cost including all overheads relevant to phase-II of the plaza incurred during the year ending 31.3.1996 to 31.3.1999 but has furnished different value of cost per sq.ft. in various letter furnished to the Department, which is evident from the discussions made in earlier paragraphs.

7. Besides the above, vide this office letter dt.28.9.2016, the assessee was asked to clarify the following

Schedule XI of notes to finance account shows as under :

"Fixed assets include a sum of Rs.264079602/- being cost of super structure to an extent of 2,90,856/- sq.ft .transferred from inventory during earlier years. This however does not include the value of UDS for which the company holds the power of attorney

Vide letter dt.12.9.2016, in point No.42 - giving details of shops/office space under the owner ship of the company and which have been given on lease and units lying vacant during the relevant previous year the assessee's AR has stated as under:

Unit No.	Sq.ft.	Remarks
431A	10721	own use
G-49B &	3454	own use
5th Floor	64555	leased
F-135	18973	leased
6" Floor	65590	leased
7th floor	65590	leased
8 th floor	60973	leased
Ground	1000	leased
Basement	193455	own
TOTAL	470136	

The assessee company was asked to explain the difference.

In reply to the above question the assessee company vide letter dt.3.10.2016 stated as under:

5th Floor	64555	leased
F-135	18973	leased
6" Floor	65590	leased
7h Floor	65590	leased
8 floor	60973	leased
Ground	1000	leased
431A	10721	own use
G-49B &	3454	own use
Total	290856	
Basement	193455	own
Total	484311	
Phase I		
Shop G-5	1233	leased
Basement	6000	
Gross	491544	

The 290856 sq.ft. refer to the balance area which was transferred from the WIP/inventory to capital assets account during previous year 2004-05 which has been included in the over all total 491544 sq.ft. The Unit No.G-5 and S9G totaling to 1233 sq.ft. and basement area of 6000 sq.ft. acquired from Spencer & Co., in Phase I were capitalized way back in 31.03.1996 and 06.04.2003 which were inadvertently left out while furnishing the break up figures in the earlier communication and now stands reconciled.

On the first hand it is not known how there can be a huge difference between the inventory shown as capitalized as per notes to accounts and the actual holding of inventory capitalized.

On the other hand, on verification of Misc. records for the Ass.t year 2001-02 the assessee has submitted depreciation statement u/s 32 of the I.T Act 1961 as per Annexure 1 wherein it is stated as under :

NOTE:

(i) Depreciation on outlay on basement, atrium and terrace is not claimed as it is directed to be treated as revenue expenditure vide Appellate Order No.117/96-97 dt.9.10.1996 for the Asst. year 1993-94.

(ii) Depreciation on outlay on basement , atrium and terrace for phase II ;.5,89,07,800/- is not claimed as it is directed to be treated as revenue expenditure in :onsequent to the

Appellate order No.117/96-97 dt.9.10.96 for the Asst. year 1993-94.

When the above expenditure incurred towards basement, atrium has been claimed as revenue expenditure, how can the assessee capitalize the same in the accounts/claim cost of construction. In fact to say, the total cost of construction should be reduced by cost of construction of basement, atrium which the assessee has not done. In fact, on one hand the assessee claimed the above expenses as revenue expenditure and also capitalized the same.

In view of the above discussions, it is clear that the cost of construction adopted by the assessee is inflated and incorrect. Therefore, the cost of construction is taken at Rs.630/- in accordance with the annual report furnished in the year 31.3.2004, which is the cost given to the M/s. Spencer & Co. Ltd., The capital gain is reworked as under :

Income from capital gain :

1. <u>Building S77, S77A & S79</u>	Rs.9,06,01,500/-
Sale consideration (SOC)	<u>Rs. 56,45,264/-</u>
Less: Brokerage	Rs.8,49,56,236/-

Less: Indexed cost of acquisition

Cost of acquisition (16473 x 630= 1,03,77,990)	
Indexed cost of acquisition $10377990 \times 939/480 = 20301942/-$	
Indexed cost of improvement	
$1954017 \times 939/551 =$	<u>3329985/-</u>
	Rs.2,36,31,927/
	Rs.6,13,24,309/

2. <u>Building S36, S36A, 53GB</u>	Rs.4,72,04,120/
Sale consideration	<u>Rs. 46,00,414/</u>
Less: Stamp Duty & Brokerage (37,74,342 + 8,26,072)	Rs.4,26,03,706/

Less: Indexed cost of acquisition

Cost of acquisition (8774 x 630= 55,27,620)	
Indexed cost of acquisition	
$5527620 \times 939/480 =$	<u>Rs.1,08,13,407/-</u>
	Rs.3,17,90,299/

Income from Capital Gains: (Rs.6,13,24,309 + Rs.3,17,90,299)	<u>Rs.9,31,14,608/</u>
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4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submissions on the issue which has been reproduced in para 3 of page 2 to page 5 of Ld. CIT(A) order. The sum and substance of arguments of the assessee before the CIT(A) are that, the assessee has constructed building in two phases and cost of construction for phase I was at Rs. 630 per sq.ft., whereas the cost of construction for phase II works out to Rs. 1255.47 per sq.ft. The assessee has transferred three units in phase II in the impugned assessment year and thus, has rightly adopted cost of construction incurred for phase II which was at Rs. 1255.47 per sq.ft. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of detailed workings furnished by the assessee, opined that the Assessing Officer has disputed cost of construction adopted by the assessee by taking into account average cost incurred for construction of phase I and phase II, without appreciating fact that cost incurred for construction of phase I was at different time and cost incurred for construction of phase II was at different time. Further, when the assessee has sold few units in phase II, cost incurred for construction of phase II alone

needs to be considered but not average cost. Therefore, the Id. CIT(A) directed the AO to adopt cost of acquisition at Rs. 1255.47 per sq.ft. as claimed by the assessee. The relevant findings of the CIT(A) are as under:

"8. The working of the costing for all the three phases of the project has been given by the assessee as per detailed charts enclosed as Annexure-A, B, C & D. The charts reflect the cost of construction with respect to the areas constructed.

9. As above, the assessee has given detailed working of all the expenditure which had been capitalised towards the cost of construction of the constructed space in Spencer Plaza. The construction activities (indexed cost) and the corresponding expenditures have been declared since 1988. The assessee company had filed detailed P&L account & B / S for all the years wherein the figures given in para 8 above are reflected. The expenditures have been vouched as per returns of income filed for all the years and assessment orders passed for many years accepting the returned incomes. The assessee has clearly reflected the cost of acquisition at Rs. 1,255.47/sq.ft in Phase II of the areas constructed between 1993 to 1999. The areas which were capitalised and shown as investment in Phase- II have now been sold. The assessee is well within its rights to claim the capitalised cost as the cost of acquisition and claim indexation thereon. The Assessing Officer has not given any cogent reasons for arriving at the cost of acquisition of constructed space at Rs.630 per sq. Ft. It appears that the Assessing Officer has taken the cost of acquisition of Phase-I & Phase -II together for arriving at the cost of acquisition. This is incorrect. The Phase-I constructed area has a different cost of acquisition at Rs.449.50 per sq.ft. The Phase-II constructed area has a cost of acquisition at Rs. 1,255.47 per sq.ft. This has been declared in the returns filed between AY 1994-95 to AY 2013-14 over a period of almost 20 years. The Assessing Officer cannot dispute the historical cost of construction given by the assessee based on detailed books of accounts

maintained with all supporting vouchers over a period of two decades. The balance sheets reflecting the cost of acquisition have been filed over a period of 20 years and cannot be disputed now. Considering the same, the cost arrived at Rs.630 per sq.ft by the Assessing Officer is rejected as unscientific and incorrect. The Officer is directed to take the cost of acquisition at Rs. 1255.47 and allow indexation thereon. The grounds of appeal of the assessee are allowed on this issue."

5. The Ld. DR, submitted that the Ld. CIT(A) erred in not appreciating the fact that the assessee has worked out cost of acquisition for construction of Spencer plaza at Rs. 630 per sq.ft., as per annual report furnished for the assessment year 2004-05.

6. The Ld. Counsel for the assessee, on the other hand referring to various documents including working sheets of cost of construction for phase I and phase II submitted that, the assessee has filed all evidences to prove that cost of construction for phase II works out to Rs. 1255.47 per sq.ft. However, the AO has worked out different cost of construction by averaging cost incurred for phase I and phase II. The CIT(A), after considering relevant facts has rightly deleted addition made by the AO and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from record indicate that the assessee company has developed Spencer plaza in Chennai under joint venture agreement with M/s. Spencer & Co. Ltd. As per the agreement between the parties, the assessee had developed the land in two phases right from assessment year 2004-05 onwards. The assessee has maintained separate set of accounts for each phase of construction. As per details furnished by the assessee, the cost of construction for phase I works out to Rs. 630 per sq.ft. and cost of construction for phase II works out at Rs. 1255.47 per sq.ft. The assessee has sold three units in the impugned assessment year and computed business income for one unit and long term capital gains for two units. The assessee has adopted cost of acquisition of Rs. 1255.47 per sq.ft. for both business income as well as capital gains. The AO has accepted income computed under the head business and profession by adopting cost of acquisition at Rs. 1255.47 per sq.ft., but disputed capital gains computed by the assessee by objecting cost of acquisition at Rs. 1255.47 and has re-computed average cost of acquisition at Rs. 832.89 per sq.ft., based on cost of

construction for phase I and phase II. In our considered view, the AO is basically erred in not appraising facts in right perspective because what was sold by the assessee for the impugned assessment year is units located in phase II which has a different cost of construction. Therefore, in our considered view, when the assessee has a different cost for different phases, then the AO ought to have adopted cost of construction incurred by the assessee for phase II, more particularly when the assessee is having sufficient evidence to prove that cost of construction for phase I and phase II are different. The Id. CIT(A), after considering relevant submissions of the assessee has rightly directed the AO to adopt cost of construction at Rs. 1255.47 per sq.ft. as claimed by the assessee. Hence, we are inclined to uphold the findings of the Ld. CIT(A) and reject grounds taken by the revenue.

8. The next issue that came up for our consideration from ground no. 3 to 3.3 of revenue's appeal is deletion of addition towards disallowance of expenses at Rs. 27,36,145/-. The assessee has sold two units in S-77/77A and S-79 for a consideration of Rs. 9,06,01,500/-. The said sale is a conditional sale and as per agreement between the parties

unrealized rental amount needs to be paid to the buyer. Therefore, while computing capital gains, the assessee has reduced a sum of Rs. 27,36,165/- from full value of consideration in terms of section 50C of the Act at Rs. 9,06,01,500/-. The AO has computed capital gains by adopting full value of consideration as per provisions of section 50C of the Act at Rs. 9,06,01,500/-. However, not allowed amount paid by the assessee towards unrealized rent.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that full value of consideration received by the assessee for computation of capital gains is equal to guideline value of the property as per provisions of section 50C of the Act. In fact, the AO admitted fact that the assessee has adopted full value of consideration of Rs. 9,06,01,500/-. The only dispute is with regard to the deduction from full value of consideration towards unrealized rent paid to buyer amounting to Rs. 27,36,165/-. The assessee has reduced a sum of Rs. 27,36,165/- from full value of consideration, because there was an obligation to pay said amount towards unrealized rent

of the building. The AO, disallowed deduction claimed by the assessee from full value of consideration. We find that there is an obligation on the part of the assessee to pay unrealized rent to buyer in terms of agreement between the parties. In our considered view, said payment partakes the nature of expenses of transfer which needs to be allowed as deduction. The Ld. CIT(A), after considering relevant facts has rightly directed the AO to allow expenditure claimed by the assessee from full value of consideration and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject grounds taken by the revenue.

10. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 31st January, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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