

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.911/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

आयकर अपील सं./ITA No.1811/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Vaduthala Super Properties P.Ltd. No.13, Raghaveera Avenue, Poes Garden Chennai-600 086.	बनाम/ Vs.	Income Tax Officer Corporate Ward-3(4), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCV-4840-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri D.Anand (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Revenue by	:	Ms. Jancy Elizabeth (JCIT) – Ld.DR

सुनवाई की तारीख/Date of Hearing	:	30-01-2023
घोषणा की तारीख /Date of Pronouncement	:	02-02-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 & 2012-13 arise out of separate orders of learned first appellate authority. However, the facts as well as issues are stated to be identical. The appeal for AY 2011-12 arises out of the order of Ld. Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 28.02.2019 in the

matter of an assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Act on 30.11.2018. The grounds raised by the assessee read as under:-

“The order of Commissioner of Income Tax (Appeals) is contrary to law, facts of the case and material on record.

2. The Commissioner of Income Tax (Appeals) erred in holding that the reopening of assessment has been done on proper legal and technical grounds.

The Commissioner of Income Tax (Appeals) failed to appreciate that the reassessment did not result in re-computation of loss or depreciation allowance or any other allowance as is required under the provisions of Sec.147 of the Act.

The Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer is not permitted to reopen merely because in the later year he took a different view on the basis of similar material as held by Mumbai High Court in the case of Precilion Holdings Ltd. vs. DCIT. (Writ Petition No.3342 of 2018 dt. 25/02/2019)

The Commissioner of Income Tax (Appeals) ought to have noticed that in the absence of commercial activity there was no claim for revenue expenditure and consequently there was no case for making disallowance of expenditure.

3. The Commissioner of Income Tax (Appeals) erred in not adjudicating on the assessee's reliance on the decision rendered by the Chennai Bench of the Income Tax Appellate Tribunal in the case of M/s. R.K.M. Powergen Pvt. Ltd. holding that the question of disallowance does not arise when the assessee has not claimed the sum paid as expenditure.

The Commissioner of Income Tax (Appeals) failed to appreciate that the Bombay High Court in the case of Amore Jewels Pvt. Ltd. vs. DCIT held that "if there is no discussion whatsoever by the Tribunal of the various case laws detailed in the submission filed by the assessee, the order is non-speaking and has to be recalled. The Tribunal should take into account the material and case laws relied upon by the assessee during the hearing"

4. The Commissioner of Income Tax (Appeals) ought to have appreciated that the vendors whom the Assessing Officer summoned during the course of assessment proceedings for the assessment year 2012-13 for recording sworn statements have admitted to have demanded and received rehabilitation and settlement charges and in the absence of material to the contrary there was no justification to treat the expenditure as inflation of purchase cost.

5. For these grounds and such other grounds as may be adduced either before or during the appeal, proceedings, the appellant prays that the Hon'ble Income Tax Appellate Tribunal may be pleased to cancel the reassessment made by the Assessing Officer as illegal and untenable and render justice.”

As is evident, the assessee assails validity of reassessment proceedings besides contesting issues on merits. The Ld. AR advanced arguments which have been controverted by Ld. Sr. DR. Having heard rival submissions, the appeal is disposed-off as under.

2.1 The assessee's return of income for this year was processed u/s 143(1). However, the case was reopened on the basis of revisional jurisdiction u/s 263 for AY 2012-13 and consequential assessment framed for that year u/s 143(3) r.w.s. 263 wherein it was held by Ld. AO that the payment made by the assessee towards rehabilitation and settlement charges were not supported by any documentary evidences and the payment was to be treated as inflation of purchase cost. The same was to be reduced from the cost price of the land whenever there were gains on sales of relevant lands.

2.2 Since similar payment of Rs.83.73 Lacs was made by the assessee during AY 2011-12, the case was reopened and notice u/s 148 was issued on 27.03.2018. The assessee's objection to reassessment proceedings were rejected by Ld. AO.

2.3 On merits, the assessee, in support of its claim, submitted rehabilitation & settlement agreements entered into with the power holder of the vendors. The same was rejected by Ld. AO on the ground that the assessee did not produce any evidence to prove carrying out of any rehabilitation and settlement activity by the vendors. The same was also confirmed by Shri S. Sasikumar (power holder of the vendors) who made statement u/s 131 that to offer additional incentive to vendors to discontinue their agricultural activities and to compensate the vendors for development undertaken in the form of well, pump sheds, crops and cattle shed, the compensation was paid to the sellers. The same was also confirmed by few of the vendors namely Shri S. Srinivasan and Shri A. Selvam in statement recorded u/s 131 wherein it was admitted that they demanded compensation which could be used for incurring similar expenditure on some other land that could be identified in future.

However, in the absence of any proof that any such activities were carried out either by the sellers or by the assessee, Ld. AO opined that the amount so paid by the assessee was to be considered as inflation of purchase cost only.

2.4 The Ld. AO further noted that the payments were made by the assessee company to Mr. Sasikumar and not to the vendors directly. It was a composite contract with Mr. Sasikumar to pay for said rehabilitation & settlement charges. The company had paid to Mr. S. Sasikumar through demand draft, who in turn, issued bearer cheque to the ultimate landlords. There was no conclusive proof of rehabilitation and settlement payment. From the registered sale deed, it was clear that subsequent agreement and claim of payment towards rehabilitation and settlement was against the terms of said sale deed. There were no mention about any crop, pump set etc. in sale deed since as per deed only vacant possession was handed over. Therefore, the additional payment so made by the assessee towards rehabilitation and settlement charges was held to be colorable device and accordingly, sum so paid for Rs.83.73 Lacs was treated as inflation of purchase of cost of land and the same was to be excluded from the same upon sale of land in future.

2.5 Upon further appeal, Ld. CIT(A) upheld the reassessment proceedings and also confirmed the stand of the Ld. AO on merits as under:-

5. The assessee has objected to the initiation of reassessment proceeding, in this case. However, it is seen that the Assessing Officer has followed due procedure and has countered the objections filed by the assessee. The re-assessment for Assessment Year 2011-12 has followed a similar addition made for Assessment Year 2012-13. Prior to this reassessment, the Assessing Officer had not verified this issue and had not taken any stand or opinion on this issue. In view of the same, it is held that the reopening of assessment has been done on proper legal and technical grounds. The objections of the assessee in this regard are rejected.

6. The contents of the assessment order as well as the explanation filed by the assessee are examined. An amount of Rs.88,73,300/- had been given to Mr. Shashi Kumar Power holder on behalf of the vendors. Mr. Shashi Kumar has received the amount by cheque from the assessee company and has claimed to have distributed the compensation in cash to the vendors. No evidence with respect to the alleged cash given is filed by the assessee. Moreover, the assessee company was not able to establish the reasons for which compensation was allegedly given. The alleged assets in the form of well, pump set shell, crops, cattle sheds for which compensation was paid could not be shown by the assessee company. The very reason for which the additional amount of Rs.83,73,300/- was given has not been established. In view of the same, it is held that the assessee had not been able to establish the business expediency and necessity of giving this additional consideration for acquisitions of land. The appeal is dismissed on merits.”

Similar are the facts in AY 2012-13 wherein an assessment was framed u/s 143(3) r.w.s. 263 on 20.12.2017 and similar payment of Rs.66.85 Lacs was held to be inflation of land cost. The Ld. CIT(A) endorsed the stand of Ld. AO. Aggrieved as aforesaid, the assessee is in further appeal before us for both the years.

Our findings and Adjudication

3. After perusal of given factual matrix, it is quite clear that the assessee has purchased certain parcels of land during the year through power holder of the vendors. The same are evidenced by registered Sale Deeds. The revenue has no case for invocation of Sec.50C. The assessee has made separate payments to the power holder of the vendors on account of rehabilitation and settlement charges pursuant to separate agreements. The amount so paid to the power holder has ultimately been paid to the vendors as per their respective land holding. The power holder as well as few of the sellers has already confirmed these facts. Another undisputed fact is that the payments have been made by the assessee pursuant to the agreements through banking channels. The assessee is shown to have no other business relationship with the power holder. Therefore, the payment so made, would be

nothing but part of cost of acquisition of land by the assessee. The assessee' claim could not be usurped by the fact that the amounts were not actually spent by the respective vendors on rehabilitation and settlement activities. Therefore, the payments so made by the assessee, in both the years, would form cost of land as capitalized by the assessee. We order so. The corresponding grounds stands allowed.

4. So far as the legal grounds are concerned, we find that the original return of income was processed u/s 143(1) and no opinion was formed on the impugned issue by Ld. AO. The findings of other assessment proceedings, in our considered opinion, could very well trigger reopening of the assessment for this year as long as Ld. AO formed a reasonable belief that certain income escaped assessment. Therefore, we do not find any infirmity or illegality in reassessment proceeding initiated by Ld. AO for AY 2011-12. The corresponding grounds raised stand dismissed.

5. Both the appeals stand partly allowed in terms of our above order.

Order pronounced on 02nd February, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 02-02-2023
DS

आदेश की प्रतिलिपि ँ प्रेषित/Copy of the Order forwarded 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