आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No. 366/Hyd/2013		
Assessment Year: 2007-08		
Dy. C I T Circle 16(2) Hyderabad	Vs.	Maheshwari Mega Ventures Ltd, Hyderabad PAN:AADCM9780D
(Appellant) PAN:		(Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Shri Jeevan Lal Lavidiya, CIT (DR)	
Date of hearing:	17/07/2023	
Date of pronouncement:	19/07/2023	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the Revenue is directed against the order dated 24.12.2012 of the learned CIT (A)-V, Hyderabad relating to A.Y.2007-08 on the following grounds:

> "*1. The Order of the CIT(A) is erroneous in law and on facts of the case.*
>
> *2. The CIT(A) erred in not considering disallowance of expenditure on buy back is not as per agreement or exchange deeds for accounting the same in the Assessment Year in consideration.*
>
> *3. The CIT(A) ought to have appreciated the fact that payments to M/s Shasun Finance Limited was not based on the MOU dated 28-02-2007 but ASIGPA dated 14-10-2008.*
>
> *4. Any other ground(s) that may be urged at the time of hearing.*"

2. As regards the merits of the case, brief facts are that the assessee is a company engaged in the Hotel and Construction business, filed its original return of income for the A.Y 2007-08 on 7.11.2007 admitting income of Rs.1,14,00,240/-. Subsequently, the assessee company revised its income by filing a revised return on 31.01.2009 duly including the capital gains on receipt of sale of property, which the assessee originally claimed exemption u/s 47(iv) in the original returned income. The case was selected for scrutiny and order u/s 143(3) was passed on 31.12.2009 accepting the revised computation filed by the assessee. Later, the case was reopened u/s 147 as the Long-Term Capital Gains were short computed. In response to the statutory notices issues u/s 143(2) & 142(1) of the Act, the AR of the assessee appeared before the AO from time to time and furnished the requisite information as called for. The Assessing Officer completed the assessment and a notice of demand of Rs.2,54,32,976/- u/s 156 of the Act was sent to the assessee along with penalty proceedings u/s 271(1)(c) of the Act.

3. In appeal, the learned CIT (A) deleted the addition made by the Assessing Officer to the following effect:

> *"6. Grounds nos.2 to 5 relate to initiation and disposal of re-assessment proceedings. The appellant avers that the working of the Long-term capital gains was furnished by them along with the revised return of income filed on 31.01.2009. The said long term capital gain offered considered by the Assessing Officer in the assessment order passed on 31.12.2009. It is the contention of the appellant that no new material or new findings were made out by the Assessing Officer and based on the already furnished details and accepted in the assessment order passed, the Assessing Officer again reopened the assessment. As per the appellant this is nothing but change of opinion by the present Assessing Officer on the already submitted and accepted facts and such reassessment proceedings, without detailed reasoning and*

without passing speaking order, make it null and void as per the decision given in the case of GKN Drivershafts (India) Ltd v. ITO 259 ITR 19.

6.1 The same are considered. However, going by the facts of the case and the issues raised by the Assessing Officer in the reassessment proceedings, there appears some reasoning in the reasons records for reopening the assessment. Therefore, without dwelling on these technical grounds, I set out to deal this appeal on merits involved."

.....

7.3 It is here, the Assessing Officer in the reasons recorded took objection that when the consideration for the already bought back developed area was adopted 1,026/- per Sft in the part I of land and Rs.467/- per sft in the Part and based on registered documents mentioned against each part of land, the cost of the area to be bought back was adopted at an average rate of 2,000/- per sft for both the parts of the land and arrived at a difference of 1,94,15,94/- in the cost of area shown to be bought back by the appellant.

7.4 However, in the reassessment order dated 28.09.2012, the Assessing Officer in pages 8 &9 disallowed the entire provision made for buy back of the developed area of 13,682 Sft and brought to tax an amount of 2,73,64,000/-. The reasons brought out by the Assessing Officer are that there are no details in the form of any agreements or exchange deeds evidencing the buy-back of remaining 8000 + 5682 Sft of developed area in the financial year 2006-07. The Assessing Officer further added that deductions claimed in the present year intending to buy back the developed area in a future date cannot be allowed while the same are to be allowed in the financial year in which they were actually brought back by the appellant. Here the deviation I find from the reasons recorded for reopening and the assessment made is that in the reasons the Assessing Officer took objection to the rate adopted at 2,000/- per Sft for the developed area pending to be bought back. In the reassessment order, the total claim of future buy back of developed area was disallowed since no buying back of the developed area took place in the year under consideration. While holding so, the Assessing Officer totally over looked the obligation cast on the appellant to buy back the developed area from the land owners as part of the agreement entered into. The appellant also furnished a copy of the agreement entered into by them with the landowners for purchase of the balance developed area. The question of allowing the cost of purchase in the year when the actual purchase has

taken place does not arise, as pointed out by the Assessing Officer. When the future liability was crystallized in an accounting year, deduction should be allowed in that account year though liability may have to be discharged at a future date. The appellant had rightly placed reliance on the decision of the apex court in the case of Bharat Earth Movers v. CIT for the treatment given in the computation of long-term capital gains. Therefore, the disallowance made at Rs.1,60,00,000/- and Rs.1,13,64,000/-, the Assessing Officer towards provision for buy back of developed area from the long-term capital gains is not sustainable".

4. Aggrieved with the order passed by the learned CIT (A), the Revenue is in appeal before the Tribunal. The learned DR submitted that the learned CIT (A) had passed the cryptic non-speaking and unreasoned order. Further, the learned CIT(A) had relied upon certain documents which were filed for the first time during the appellate proceedings. These documents, such as MOU, were neither examined by the learned CIT (A) nor any remand report was called for. He had submitted that the matter is required to be sent back for re-examination to the learned CIT (A).

5. The learned Counsel for the assessee, however, supported the orders of the learned CIT (A) and submitted that the learned CIT (A) elaborately dealt with the issues, which are subject matter of appeal of the Revenue, therefore, grounds raised by the Revenue should be dismissed. He, however, had insisted for adjudication of application filed under rule 27 of the ITAT Rules, whereby the learned AR sought reversal of finding recorded in Para 6.1 of CIT (A) order. Further, it was also submitted that once documents were available with the learned CIT (A), than merely order is lacking detailed analysis, cannot be the ground to set aside the appellate order.

6. We have heard the rival arguments made by both the sides and perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. Undoubtedly, the reasoning reproduced herein above in Para 7.4, clearly shows that the learned CIT (A) had granted relief to the assessee on the basis of documents subsequently filed before him. In our view, the learned CIT (A) is duty bound to examine all the documents filed during the appellate proceedings in accordance with law, i.e. after affording the opportunity of being heard to the Assessing Officer. The same had not been done. Further, learned CIT (A) nor examined the settlement arrived between the assessee and others before the Hon'ble Supreme Court, its relevance and further failed to examine the genuineness of MOU entered between the assessee and the sellers, more particularly MOU dated 1st September, 2006 and 28th February 2007. For the above said reasons, we are in agreement with the submissions of the learned DR. As a sequel to the non-speaking cryptic order thereof, we deem it appropriate to remand back the matter to the file of the learned CIT (A) for fresh adjudication. With respect to the ground raised in Rule 27, ITAT Rules Application, we are of the view that this ground we are not deciding and keeping this legal ground open to be decided in appropriate case. However, since we are sending back the appeal of the Revenue back to the file of the learned CIT (A), therefore, we also direct the learned CIT (A) to decide again the grounds pertaining to reopening and pass reasoned speaking order after affording due opportunity of being heard to the assessee.

7. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 19th July, 2023.

Sd/-	**Sd/-**
(R.K. PANDA) **VICE-PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 19th July, 2023.
Vinodan/sps

Copy to:

S.No	Addresses
1	ACIT/Dy.CIT, Circle 16(2) 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
2	M/s. Maheshwari Mega Ventures Ltd., 4-1-833, 3rd Floor, MPM Mall, ABIDS, Hyderabad
3	CIT-IV, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order