

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H”, MUMBAI**

**BEFORE VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.1448 & 1449/Mum/2023
(Assessment years 2012-13 & 2013-14)**

KSA Enterprises Ground Floor, 2B, Kapur Mansion 10, Moreland Road, Agripada, Maumbai-400 011 PAN : AALFK6188J	vs	Income-tax Officer-22(6)(2) Pirmal Chambers, Lal Baug Mumbai-400 013
APPELLANT		RESPONDENT

Assessee represented by	Mr. Mohammed Anas Siddique, CA
Department represented by	Shri Prashant Mahajan Sr.AR

Date of hearing	12-07-2023
Date of pronouncement	27-07-2023

ORDER

PER : MS PADMAVATHY S. (AM)

These appeals are against the orders of Commissioner of Income-tax, National Faceless Appeal Centre dated 02/03/2023 for A.Ys 2012-13 & 2013-14.

2. The common issue contended in both the appeals pertains to the Assessing Officer not allowing the capitalization of the amount paid by the assessee as a compensation for cancellation of Memorandum of Understand (MOU) towards clearing the title of the property purchased by the assessee.

3. Brief facts : The assessee is carrying on the business as builders and developers. The assessee for A.Y. 2012-13 filed the return of income on 10/09/2012 declaring income of Nil and for A.Y. 2013-14 on 20/07/2013 declaring total income of Rs.1,39,834/-. The Assessing Officer received an information from the office of the ITO (I&CI), Unit I(3), Mumbai that during the financial year relevant to AY 2012-13, the assessee has increased the cost of property from Rs.7,80,00,000 lakhs to Rs.8,05,00,000/- and based on the same the Assessing Officer issued a notice of reopening under section 148. The assessee submitted that assessee has purchased 3/5th share in the property known as 'Suryali compound' during the financial year relevant to A.Y. 2012-13 and 2/3rd of the property during the financial year relevant to A.Y. 2013-14. In this regard, the assessee had entered into agreements with the sellers on 29/02/2012. The assessee submitted that the property was owned by 5 individuals and that some of the owners have entered into agreements to sell the property prior to entering into agreement with the assessee. The said agreements were entered into by the sellers in a separate Memorandum of Understanding (MOU) dated 05/05/2011 and 14/05/2011 with one Mr. Salim Sonde and Mr. Moosa Koradia. The assessee was desirous of acquiring the clear title in the property and, therefore, entered into a deed of cancellation with Mr. Salim Sonde and Mr. Moosa Koradia on 28/02/2012 and paid a sum of Rs.10 lakhs and Rs.15 lakhs respectively to them to get the clear title of the property. Since the amount is paid towards acquiring the absolute and undisputed title of the property, the assessee capitalized the same to work-in-progress.

The Assessing Officer, during the assessment proceedings did not accept the submissions of the assessee for the reason that the assessee has not produced any

valid legal document which could evidence that the right or title of the property vested with Mr. Salim Sonde and Mr. Moosa Koradia. The Assessing Officer therefore held that amount paid is not directly related to the cost of acquisition of the property purchased by the assessee. Accordingly, the Assessing Officer reduced the amount of Rs.25 lakhs from the work-in-progress as computed by the assessee.

4. Before the CIT(A), the assessee submitted a detailed note the extract of which is as given below:-

“Submission of the Appellant:

In addition to the grounds of appeal filed along with Form No. 35, we are instructed by our above clients to further submit as under:

1. We enclose herewith a copy of the statement of facts and grounds of appeal (**Annexure 1**) filed by our client along with the copy of Form 35 on 27.12.2019 (**Annexure 2**) and (**Annexure 3**) with the CIT (A), Mumbai. Further, a copy of the assessment order for A. Y. 2012-13 is also enclosed herewith (**Annexure 4**).
2. This appeal has been preferred by the appellant against the disallowance of Rs25,00,000/- made by the Learned Assessing Officer 22(2)(6), allegedly as unexplained expenditure and thereby reducing the same from the carrying value of the work in progress from Rs 14,59,26,2987- to Rs. 14,34,26,2987- as on 31st March, 2012.
3. The Facts of the case are as under-
 - i) During AY 2012-13 relevant to financial year 2011-12, the appellant had purchased 3/5th share in the property known as "Suryaji Compound" vide deed of transfer cum assignment dated 29th February, 2012 (Annexure 5) for a total consideration of Rs 7,80,00,000/- The said agreement contained therein 3 assignors, each holding 1/5th right in the said property "Suryaji Compound" The three assignors were as under:-
 - a. Mohammed Halim Mohammed Saiim Shaikh holding
 - b. Legal Heirs of Late Mr Mohammed Habib Mohammed Salim Shaikh
 - c. Mohammed Farouk Mohammed Salim Shaikh
 - ii) Further, the assignors as mentioned above had also earlier entered into a Memorandum of Understanding & Deed of Assignment Cum Transfer both dated 09.08.2011 with one Mr Moosa Koradia of Koradia Construction & also had entered into a Memorandum of Understanding dated 05.05.2011 & 14.05.2011

with one Mr Salim Sonde, according to which they had agreed to transfer their respective rights in the said property to Mr Moosa Koradia & Mr Salim Sonde subject to terms & conditions agreed amongst them.

- iii) Since the deal between the assignors mentioned above and Mr Moosa Koradia & Mr Salim Sonde did not fructify and the appellant feeling a real estate developer and wanting to redevelop the property, purchased the said rights from the assignors for a total consideration of Rs 7,80,00,000/- and in order to obtain a clear undisputed title in the said property, our client entered into separate "deed of cancellation" agreements with Mr Moosa Koradia & Mr Salim Sonde both dated 28.02.2012 for which they were paid Rs 15,00,000/- & Rs 10,00,000/- respectively towards extinguishment of their rights in the said property. The signed copies of deed of cancellation (Annexure 6) were during the course of assessment proceedings submitted before the Learned Assessing Officer 22(2)(6). Copies of bank statement wherein the said payments made to them have been highlighted in yellow wash. (Annexure?)
- iv) Further it will be pertinent to state here that these Deed of Cancellations are duly notarized documents and the Learned Assessing Officer 22(2)(6) should have ought to considered them before reaching to an arbitrary conclusion that the said payments made to them were not directly related to the cost of the property.

1. It is a well settled principle that any expense incurred which improves one's title for a property is capital in nature and should be capitalized, which is rightfully done by the appellant.

2. Furthermore the Learned Assessing Officer has neither during the course of assessment nor in the assessment order, has pointed out any irregularities in the deed of cancellations submitted before him which could prevent him from relying on them. Further the Learned Assessing Officer has also not disputed the fact that payments have been made to Mr Moosa Koradia & Mr Salim Sonde aggregating to Rs 25,00,000/- but has reached to an arbitrary conclusion that the said payments cannot be capitalized as they are not directly related to cost of property. 3. At the cost of repetition, we reiterate that the said payments were made through Account Payee Cheques as per signed, notarized deed of cancellations and neither has the AO throughout the course of assessment nor in the assessment order has pointed out any irregularities in them nor has he disputed the fact that payments has been made. Thus it is prayed that the same should be allowed to be capitalised in the carrying amount of work in progress and the addition made by the Learned Assessing Officer 22(2)(6) should be deleted in toto.

For your honour's ready reference of the following documents have been furnished as above

- a. Deed of transfer cum assignment dated 29th February, 2012 through which the appellant had purchased the rights (**Annexure 5**)
- b. Aforementioned deed of cancellations dated 28th February, 2012. (**Annexure 6**)
- c. Copies of bank statement wherein the said payments made have been highlighted in yellow wash. (Annexure 7)

We trust the above will suffice, however we shall be pleased to be furnish an further details/explanations as may be required by your honour.”

5. The CIT(A), however, confirmed the action of the Assessing Officer for the same reason that the assessee has not produced any valid legal documents. Aggrieved, assessee is in appeal before the Tribunal.

6. During the course of hearing, the Ld.AR submitted that the assessee had proposed to buy the property in Suryaji Compound for a consideration of Rs.7.80 crores from 5 owners of the property. The assessee came to know that certain MOUs have been entered into by some of the owners and have also granted specific power of attorney between Mr Salim Sonde and Moosa Koradia and accordingly, the assessee in order to get the clear title of the property paid a sum of Rs.25 lakhs in title to both these parties. The Ld.AR in this regard drew our attention to the cancellation deed entered into with Mr. Salim Sonde and Mr. Moosa Koradia (page 69 to 95 of paper book) . The Ld.AR further drew our attention to the deed of transfer / assignment entered into with the legal owners dated 29/02/2018 (page 4 to 27 of paper book) in order to substantiate that it is the same property towards which the assessee has entered into the cancellation agreement in order to obtain the clear title. The Ld.AR also drew our attention to the bank statements (page 96 of paper book) where the payment of Rs.10 lakhs and Rs.15 lakhs have been paid to the above mentioned properties. It is, therefore submitted by the Ld AR that the payments are made towards acquiring the clear title of the property and, therefore, should be allowed to be capitalized.

7. The Ld.AR, without prejudice, submitted that the impugned amount have not been claimed by the assessee as expenditure, but has only capitalized.

Therefore, the Assessing Officer has no reason to assess this amount in the re-assessment proceedings initiated under section 147 of the Act.

8. The Ld.DR, on the other hand, relied on the order of the Assessing Officer.

9. We heard the parties and perused the material available on record. The assessee, having come to know that the property, which he is acquiring from 5 owners is encumbered by the MOU entered into by few of the owners with Mr. Salim Sonde and Mr. Moosa Koradia, had paid a sum of Rs.25 to those parties. The assessee paid the said amount to get a clear title of the property by executing a cancellation deed and accordingly capitalized the amount paid to work in progress. The Assessing Officer disallowed the capitalization by reducing the amount from work in progress for the reason that the assessee has not provided the agreement or MOU entered into between the owners and Mr. Salim Sonde and Mr. Moosa Koradia. The CIT(A) has confirmed the said disallowance of capitalization for the same reason. However, from the perusal of the documents, we notice that the assessee has paid the impugned amount to the parties through proper banking channel and that the assessee has also entered into a cancellation deed with these parties. During the year under consideration the assessee did not claim the amount paid as expenditure but has capitalized by adding the same to work-in-progress. Therefore in our view there was no taxable event happened during the year under consideration and accordingly we are unable to appreciate the disallowance made by reducing the work-in-progress in the order of the re-assessment passed by the Assessing Officer under section 143(3) read with section 147. In view of these discussions we hold that the disallowance made by the Assessing Officer by

reducing the work-in-progress is not correct and accordingly set aside the order of the CIT(A).

10. For the Assessment Year 2013-14, the assessee has acquired the 2/3rd of the land and has paid a sum of Rs.21 lakhs to Mr. Munaf Kader Vadgama towards cancellation of the MOU executed earlier by the owners. The Assessing Officer, on the same ground that proper documents have not been produced reduced the said amount from the work-in-progress. Since the facts and circumstances of the case for the year under consideration are identical to the issue considered in earlier paragraphs for A.Y. 2012-13, we, on the same ground set aside the order of the CIT(A) for AY 2013-14 also. The appeal is allowed in favour of the assessee.

11. In the result, both the appeals are allowed in favour of the assessee.

Order pronounced in the open court on 27/07/2023.

Sd/-

sd/-

(VIKAS AWASTHY)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 27th July, 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy// Asstt. Registrar / Senior Private Secretary, **ITAT, Mumbai**