

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

I.T.A. No.107/DEL/2021
Assessment Year 2016-17

ACIT, Circle-58(1) Delhi.	Vs.	Dwarika Balaji, 2 nd Park End, Delhi-110092
TAN/PAN: AABAD2075J		
(Appellant)		(Respondent)

Appellant by:	Shri S.B. Gupta, CA Shri Morh Mukut P. Yadav, Adv.		
Respondent by:	Shri Amit Katoch, Sr.DR		
Date of hearing:	11	09	2023
Date of pronouncement:	25	09	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXXV, Delhi ['CIT(A)' in short] dated 20.02.2020 arising from the assessment order dated 17.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

2. As per the grounds of appeal, the Revenue has challenged the reversal of disallowance of amount at Rs.45,65,51,338/- on account of provision for development expenses.

3. Briefly stated, the assessee is an Association of Person (AOP) engaged in the business of development of real estate and was developing an integrated township of 423053 sq. mtrs at Janshad

Road, Muzaffar Nagar, Uttar Pradesh at the relevant time. The assessee filed return of income for Assessment Year 2016-17 in question declaring income at Rs.2,18,31,910/-. The return filed by the assessee was subjected to scrutiny assessment. In the course of scrutiny assessment, the Assessing Officer *inter alia* observed that the assessee has booked an amount of Rs.45,65,51,338/- as provision for development expenses. On inquiry, the assessee submitted that such provision is made for all the estimated cost to complete the project and the expenses claimed as provision having been actually incurred in F.Y. 2015-16 relevant to Assessment Year 2016-17 in question but is likely to be incurred in the ensuing years. The Assessing Officer observed that such provision goes against the rudimentary principles of accounting and are not allowable expenditure under Section 37 of the Act. The Assessing Officer accordingly disallowed the provision for development expenses and added the same to the returned income.

4. Aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee *inter alia* referred to a grievance petition related to high pitched scrutiny assessment dated 30.04.2019 placed before the Pr.CIT. The grievance committee constituted for redressal of grievances agreed to the claim of the assessee that such provisions for expenses in turn resulted in corresponding increase in the closing inventory of unsold plots and thus the profits deducted is correct and is unaffected by the provisions towards development expenses. The assessee pointed out before the CIT(A) that as per the findings and recommendations of the committee, the income assessed is in high pitched and additions made on account of provision are unwarranted. The CIT(A) in turn relied upon the observations of the Grievance Redressal Committee and reversed the additions on account of provision for redressal

purposes. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

“6. It has been argued that facts relevant to the provision for development expenses made by the assessee in its books and duly explained to the AO are that the assessee submitted the Site Plan to Muzaffarnagar Development Authority (MDA) for approval for development of an integrated township in 423053 square metres of land at Janshad Road, Muzaffarnagar, Uttar Pradesh. The MDA approved the site plan on 19/10/2011 and renewed the approval on 09/09/2016, copy of approved site map furnished to the AO. The site map specified and particularized, including inter alia, areas of town earmarked as green area, water collection ponds, roads, streets, schools, hospitals, community centres, club house, post office, railway reservation counter, ATM, temples, residential and commercial blocks having distinct plot or flat or shop or office numbers. It has been contended that it implies that the integrated township project undertaken by the assessee on the total area of 423053 square metres of land required not only development of residential and commercial blocks in such town but also construction and development of various internal and external basic public utilities, amenities and facilities by way of laying down drainage and sewerage, laying electric lines, cables and poles, construction of boundary wall around the town and gate at the entry thereof, construction of roads and streets, construction of community halls, clubs, schools and hospitals, development of green area in compliance with the mandatory condition of providing for sufficient green area in the town, beautification of town by way of developing parks and horticulture, etc. Thus, it becomes manifest that the development of township does not get completed simply by acquiring land, but development of the abovementioned basic amenities and facilities are integral part and component thereto.

7. It has been argued that the site plan approved by the MDA entitled the assessee to sell 187232 square metres out of the total township area of 423053 square metres. The remaining area of the town comprised of 75012 square metres of land remaining to be purchased by the assessee as on 31/03/2016 and 160809 square metres of land earmarked by the MDA for construction and development of the abovementioned various public utilities, basic amenities and facilities. It implies that the total saleable area approved by the MDA, entitling the assessee to sell the same to buyers, was 187232 square metres. It has been submitted that the appellant had sold 1669.97 square metres of plot in FY 2014-15 relevant to the AY 2015-16, resulting into saleable area in the hands of the assessee of 185562.03 square metres as on the first day of the relevant financial year 2015-16 relevant to the

assessment year 2016-17. It has been brought on record that out of this saleable area of 185562.03 square metres, the appellant sold 22563.49 square metres of plot during FY 2015-16 relevant to the relevant AY resulting into 162998.54 square metres inventory of unsold saleable plots in the hands of the appellant as at 31/03/2016.

8. It has been brought to the notice that the total cost of the township project approved by the MDA as per DR was Rs. 62.76 crores. Such cost included cost of land estimated at Rs. 10.24 crores. Therefore, excluding land cost, cost of the construction and development of various public utilities, basic amenities and facilities, approved by the MDA as per DPR, comes to Rs. 52.52 crores (Rs. 62.76 crores minus Rs. 10.24 crores). Here, it is equally important to note that the assessee had incurred total cost towards construction and development of various public utilities, basic amenities and facilities, excluding cost of land, of Rs. 6.12 crores upto 31/03/2016. Thus, the assessee was obviously duty bound under contractual obligation towards its buyers of plots or flats or shops or offices in the town to incur further cost of Rs. 46.40 crores towards construction and development of public utilities, basic amenities and facilities in the township project in which the assessee had partly sold plots to buyers.

9. On the basis of the above, the appellant contents that the cost of the internal and external development of various public utilities, basic amenities and facilities, determined by the MDA as per DPR, excluding land cost, was Rs. 52.52 crores. This cost was estimated in the year 2011 when DPR was initially approved. However, since more than four years had expired and much water had flown since then, and taking into consideration the inflationary trends prevalent in the country, and with a view to arrive at the most recent scientific estimates, the assessee engaged an Architect M/s Gian P. Mathur & Associates Pvt. Ltd., C-55, East of Kailash, New Delhi-110065 at the end of March, 2016 to give estimate of the cost of the pending construction and development works as on 31/03/2016 of various public utilities, basic amenities and facilities. The said architect estimated the further cost to be incurred by the assessee at Rs. 45,65,51,338 crores. As the assessee had already incurred cost of Rs. 6,12,19,312, it means that the total estimated cost of the construction and development of various public utilities, basic amenities and facilities, including the cost estimated by the said architect, come to Rs. 51,77,70,650.

Accordingly, in order to comply with the matching concept of accounting, besides having passed the entry for cost of development actually incurred upto 31/03/2016 of Rs. 6.12 crores, the assessee also passed accounting entry in its books to provide for cost of the construction and development of various public

utilities, basic amenities and facilities to be incurred of Rs. 45.65 crores for the simple reason that the assessee had obligation in praesenti to incur costs for the construction and development of various internal and external public utilities, basic amenities and facilities in the said township project more so since the assessee had already sold some of the plots of the township project in the wear under consideration by way of registered conveyance deeds.

10. The net result, argues the appellant, after considering the development expenses actually incurred upto 31/03/2016 of Rs. 6, 12, 19,312, provision for pending development expenses of Rs. 45,65,51,338 and cost incurred in the purchase of land upto 31.03.2016 of Rs. 10,78,95,077, is that the total cost of township project comes to Rs. 62,56,65,727. As stated hereinabove, the total saleable area of the plots in the hands of the assessee as on 01/04/2015, eligible for sale as per site plan and DR approved by the MDA, was 1,85,562 square metres. Thus, cost of saleable area of the project comes to Rs. 3371.73 per square metre (625665727/185562).

11. The appellant contends that simultaneous with the making of provision for development expenses, the assessee suo moto loaded such provision for expense upon the inventory of unsold plots in its hands under the heading "Closing Stock" representing work-in-progress, duly credited to the profit and loss account. The result of such loading was that the amount of the provision for development expenses relatable to the plots sold during the year was charged to profit earned during the year. The remaining amount of such provision, being relatable with the inventory of unsold plots, was added to the value of work-in-progress, thereby neutralizing the debit and credit side of profit & loss account with the same amount, resulting into no impact of such provision upon the net profit earned for the year.

12. On the basis of foregoing the appellant argues that the cost of saleable area of the project after taking into consideration provision for development expense comes to Rs. 3371.73 per square metre. In this regard, the assessee explained to the AO that it valued its work-in-progress at the rate of Rs. 3,371.73 per square metre and duly credited the same to the Profit and Loss Account under the head "Closing Stock", thereby duly offering such stock to tax. It is thus established that the value of closing stock was also simultaneously increased by the amount of the estimated provision for the cost of development as was relatable to such closing stock. In other words, the assessee debited the provision, for cost of development of Rs. 45.65 crores to its Profit and Loss Account and at the same time credited the corresponding amount relatable to its closing stock to the Profit & Loss Account, resulting into no impact upon the net profit or taxable income.

13. The AO however, disallowed the provision for Development Expenditure amounting to Rs. 45,65,51,338/- and at the same time accepted the closing stock Expenses, been valued considering this arguement of provision for "Development Expenses".

14. Being aggrieved with the addition made by the Assessing Officer the appellant had also filed a grievance petition before the High Pitched Scrutiny Assessment Committee, which found the assessment order as high pitched in nature. The Committee observed as under-

'while the AO has taken legally correct view on disallowing "Provision for Development Expenses" but he failed to appreciate the fact that the major chunk of this amount is also there in credit side in closing stock of 54.95 cr and therefore the same amount got added twice both while disallowing "Provision for Development Expenses" as well as in closing stock. This has resulted in arriving at income of Rs. 47.93 cr in the Assessment Order dated 17.12.2018 on the sale of land of Rs. 10.14 cr. which is not just possible.

Arising from the fact that disallowance of an amount of 45.65 cr was made from the expense side only without reducing the corresponding amount from the closing amount from the closing stock which resulted into double addition of the same amount. This has resulted into arriving at income of Rs. 47.83 cr on the sales of land/plots of Rs. 10. 14 cr. which is not possible.'

15. I have carefully considered the assessment order, submissions and arguments made by the appellant and the facts and circumstances of the case. I am of the same view as has been expressed by the High Pitched Scrutiny Assessment Committee discussed above. Therefore, I hold that the AO is not justified in making disallowance of an amount of Rs. 45,65,51,338/- on account of provision for "Development Expenses from the expense side, only without reducing the corresponding amount from the closing stock which resulted into double addition of the same amount which is not permissible under law. Therefore, the ground raise by the appellant is allowed."

5. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

6. The Id. DR for the Revenue relied upon the action of the Assessing Officer.

7. The Id. counsel for the assessee, on the other hand, supported

the order of the CIT(A) and submitted that as per paragraph 5.3 of the findings of the Grievance Redressal Committee dated 30.04.2019, the Assessing Officer himself accepted that he failed to notice that the 'provisions for Development Expenses' were correspondingly given effect while determining the closing stock of inventory and the closing inventory was suitably increased. Consequently the effect of provision made on account of Development Expenses has been offset and thus such provision has a neutralizing effect on the resultant income derived from real estate business during the year. The Id. counsel further submitted that the accounts have been drawn having regard to the Accounting Standard-2 and Accounting Standard 29 issued by the Accounting Body ICAI. The Id. counsel further submitted that the result of such loading of Project Development Expenses upon the inventory of unsold plots under the head 'closing stock', the Project Development Expenses relating to plots sold during the year was charged to the profit earned during the year while the provision corresponding to unsold plots forms part of the closing inventory. Thus, the provision made corresponding to unsold plots is not charged to the P&L account but forms part of the closing inventory. The Id. counsel thus submitted that in the light of the observations of the Grievance Redressal Committee for high pitched assessments and having regard to the accounting policy adopted by the assessee, the taxable income is not underreported in any manner. The Id. counsel thus urged that no inference is called for with the order of the CIT(A).

8. We have carefully considered the rival submissions, perused the assessment order as well as the first appellate order and also material referred to and relied upon in the course of hearing.

9. On perusal, we observe that the CIT(A) has concurred with the

plea of the assessee that provision for development expenses, not crystallized during the year but provided for in the P&L account, has no impact on the resultant profit for the reason that such provision has also resulted in increase in the value of the closing stock representing unsold plots as work in progress. The CIT(A) has referred to the view expressed by the Grievance Redressal Committee on high pitched assessments and reversed the disallowance.

10. We do not see any error in the action of the CIT(A) on first principles. However on further perusal, we observe on facts that while the provision for development purposes were made for an amount of Rs.45,65,51,338/-, the closing stock has been loaded with such project expenses proportionate to the unsold stock only. As a result of such accounting, the provision for development expenses attributable to the sold inventory has been actually charged during the Financial Year 2015-16 relevant to Assessment Year 2016-17 in question. The propriety and correctness of expenses attributable to inventory sold during the year has not been verified on facts by the authorities below. The CIT(A) has granted relief on the whole amount by basing this finding solely on the observations of the high pitched scrutiny assessment committee without noticing the fact the provision for development expenses relatable to plot sold during the year was actually charged to the profit earned during the year what aspect has remained unexamined and unscrutinized any the revenue authorities.

11. Thus, the order of the CIT(A) is set aside to the extent of project development expenses charged to the P&L account in relation to the inventory / plots sold during the year and restored back to the file of the Assessing Officer. The Assessing Officer

shall be entitled to verify and scrutinize the nature of expenses incurred and charged to the P&L account in relation to plots sold during the year. It shall be open to the assessee to adduce evidences and explanations as may be considered necessary to justify the propriety of the expenses debited to the P&L account out of such provisions and relatable to revenue income from inventory sold. The Assessing Officer shall pass the order afresh in accordance with law after giving proper opportunity to the assessee in this regard. The order of the CIT(A) is modified accordingly.

12. In the result, the appeal of the Revenue is allowed in part.

Order pronounced in the open Court on 25/09/2023

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**