

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.6888/Del/2019
Assessment Year: 2012-13

M/s. Economical Credit & Construction Co. Pvt. Ltd., B-23-25, Kailash Colony, New Delhi 110048 PAN AAACE 0055 E	vs.	ITO, Ward 8(1), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Neelesh Kumar Jain, CA
For Revenue :	Shri Vipul Kashyap, SR. DR

Date of Hearing :	19.07.2023
Date of Pronouncement :	11.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-34 New Delhi dated 25.06.2019 for AY 2012-13.

2. The grounds raised by the assessee are as under:-

1. *That the Learned CIT(A), on the facts and circumstances of the case, erred in assessing the income of the Appellant at Rs. 1,06,70,000/- as income from undisclosed sources against returned income of Rs. 28,85,510/-arbitrarily without appreciating the Appellate submissions and evidences brought on record.*

2. *That the Learned CIT(A) did not appreciate the facts of the case raised in additional legal grounds that even income returned of Rs. 28,85,510/-cannot be assessed in the year under appeal as the said income accrued in A. Y. 2007-08 on the basis of registered Sale Deed of the Land(s) sold by the Appellant and the Appellant erroneously offered the same as income of the year under appeal.*

3. *Without Prejudice to the above Grounds,*

The learned CIT(A) erred in upholding the contention of the Assessing Officer that sale proceeds of land(s) shown at Rs. 1,06,70,000/- as "Prior Period Income shall be chargeable to tax in the year under appeal and cost of land(s) sold amounting to Rs. 76,91,060/- shall not be allowed against the sale consideration, for arriving the profit on sale of land(s) arbitrarily.

4. That the learned CIT(A) has erred both in law and on facts in upholding the levy of interest under section 234B of the Act which is not leviable on the facts and circumstances of the case of the appellant.

3. The Id. AR submitted that the Learned CIT(A), on the facts and circumstances of the case, erred in assessing the income of the Appellant at Rs. 1,06,70,000/- as income from undisclosed sources against returned income of Rs. 28,85,510/-arbitrarily without appreciating the Appellate submissions and evidences brought on record. He further submitted that the Learned CIT(A) did not appreciate the facts of the case raised in additional legal grounds that even income returned of Rs. 28,85,510/-cannot be assessed in the year under appeal as the said income accrued in A. Y. 2007-08 on the basis of registered Sale Deed of the Land(s) sold by the Appellant and the Appellant erroneously offered the same as income of the year under appeal. The Id. AR also contended that without prejudice to ground no. 1 & 2 of assessee the Id. CIT(A) erred in upholding the contention of the Assessing Officer that sale proceeds of land(s) shown at Rs. 1,06,70,000/- as "Prior Period Income shall be chargeable to tax in the year under appeal and cost of land(s) sold amounting to Rs. 76,91,060/- shall not be allowed against the sale consideration, for arriving the profit on sale of land(s) arbitrarily.

4. Reiterating written submissions precisely as above, the Id. AR has also placed reliance on the judgment of High Court of Delhi in the case of CIT vs. Bharat General Reinsurance Comp. Ltd. 81 ITR 303 (Del) and submitted that the income accrued to the assessee should be taxed in the year of accrual of income and not in the other year as per choice of Assessing Officer. Therefore he finally prayed that the addition made by Assessing Officer may kindly be deleted.

5. Replying to the above the Id. Senior DR supported the orders of the authorities below and drew our attention towards relevant part of assessment as well as first appellate order and submitted that the ratio relied by the Id. AR in the case of CIT vs.

Bharat General Reinsurance Comp. Ltd., (supra) does not supports the argument of assessee rather its supports the orders of the authorities below.

6. On careful consideration of above submission from the assessment order we note that the Assessing Officer assessed amount of Rs. 1,06,70,000/- as income from other sources and the expenses of Rs. 76,91,960/- were disallowed by observing that the transaction was complete in FY 2006-07 and therefore the inventory stock was to be amended accordingly in that year itself. The Assessing Officer also noted that the expenses claim by the assessee do not pertain to the financial year relevant to the assessment year under consideration. The Id. CIT(A) uphold the action of the Assessing Officer with following observations and findings:-

5.3 I have considered the facts of the case, finding of the AO and submissions of the appellant. Appellant has credited income in the profit and loss account at Rs. 1,06,70,000/- and claimed expenses at Rs.76,91,960/-and disclosed the profit at Rs.29,48,895/-. The appellant has sold the land in village Morti and Noor Nagar, Distt. Ghaziabad to M/s Jai Krishan Liquor Pvt. Ltd. for total consideration of Rs. 1,06,70,000/- vide sale deeds dated 21.03.2007 but did not account for the transaction in the FY ending 31.03.2007. The appellant has submitted that it has not received the payment from the purchaser therefore it has not offered the same as income during the year of sale. It has received cheques against the sale but not deposited as the instruments were misplaced and purchaser did not issue any another cheques / pay orders. These facts come into the notice of the management in the FY 2011-12 and accordingly the sale transactions were accounted in the books of account and in final accounts under the head 'prior period income' i.e. Rs. 1,06,70,000/- and 'prior period expense' i.e. R5.76,91,960/- and the tax on the profit on sale of land was paid by the appellant. The AO has made the independent verification by issuing notice u/s 133(6) to the purchaser as well as the bank and found that no sale deed was executed by the appellant during the year and no amount was credited in the bank accounts of the appellant. Since income is not pertained to the year under consideration therefore AO has not allowed expenses against the income and treated the income from unexplained sources. The contention of the appellant that cheques were misplaced and it came into the notice of the management in the year under consideration that sale transaction were not accounted for in the books of account is without any merit. The appellant has sold the property during the financial year 2006-07 and as per the sale deed it has received the consideration also. The appellant has not brought any evidence on record which may prove that it has not received the payment in the year when it has sold the property. When the appellant has not received any payment during the year and there is no source for crediting the income in the profit and loss account, AO is justified treating the income credited in the profit and loss account as income from unexplained sources. Similarly the expenses which were claimed by the appellant they are also not supported with any documentary evidence which may prove that appellant has incurred any expenditure during the year. It is hard to believe that appellant forget to record the transaction in the year when it is actually carried out. Income has to be offered in the

year when it has accrued / received to the appellant. Thus considering all the facts, in the case of the appellant A is justified in treating the income credited during the year as income from unexplained sources and addition made by the AQ at Rs.1,06,70,000/- is hereby confirmed.

7. On careful consideration of above rival submissions, orders of the authorities below and facts and circumstances of the case we note that the appellant has credited an amount of Rs. 1,06,70,000/- and claimed expenses at Rs. 76,91,960/- disclosing profit at Rs. 29,48,895/-. The authorities below noted that the assessee has sold land situated in village Murti at Noornagar district Ghaziabad to M/s. Jai Krishan Liquor Pvt. Ltd. for total consideration of Rs. 1,06,70,000/- by sale deed dated 21.03.2007 but did not account for the transaction in FY ended on 31.03.2007 i.e. 2006-07. It was the consistent submission of assessee that it has not received payments from purchaser therefore it has not offered the same as income during the year of sale as the cheques received as payment from the purchaser were not deposited as the instruments were misplaced and the purchaser did not issue another cheque or pay orders or draft against said cheques. It was also a contention of the assessee that said facts of non receipts of payment and cheque came to the notice of management in FY 2011-12 hence the sale proceeds recorded and accounted in the final accounts under the head prior period income of Rs. 1,06,70,000/- and deduction claimed for cost thereon as prior period expense of Rs. 76,91,960/- and the tax on the profit of sale was paid by the appellant.

8. During assessment proceedings the Assessing Officer made verification by issuing notice u/s. 133(6) of the Act to the purchaser as well as the bank and found that no sale deed was executed by the appellant during the AY 2012-13 and no amount was found received from the purchaser in the bank of appellant. The Assessing Officer thus concluded that since income not pertained to the year under consideration, did not allow expenses against the income and treated the amount credited by the assessee in its P&L account as income from other sources. The contention of appellant that cheques were misplaced and entire facts of non receipt of consideration came to the notice of management during FY 2011-12 therefore the transaction was not recorded in the FY

2006-07 were dismissed by the Id. CIT(A) by observing that the appellant has sold property during FY 2006-07 and as per sale deed it has received consideration also.

9. First of all we may point out that it is trite law that entries in the books of accounts are not determinative of true nature of transaction and nature of income as per preposition rendered by Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs CIT 82 ITR 363 (SC). It is also a well established and accepted principal of tax jurisprudence that the right income should be taxed in the right hands, under right head of income in the right year of assessment. Undisputedly, in the present case the transaction of sale of property was undertaken by the assessee during FY 2006-07 pertaining to AY 2007-08 but the assessee did not recorded the entry in the books of accounts and continuously shown the property in the balance sheet till AY 2012-13. Hence, the books of accounts of assessee were not revealing correct factual position of properties owned by assessee till 2012-13.

10. As we have noted above that as per assessee during assessment proceedings of AY 2012-13 the Assessing Officer issued notice u/s. 133(6) of the Act to the purchaser M/s. Jai Kishan Liquor Pvt. Ltd. and in response to said notice the purchaser company submitted that "the company has not purchase any property from the above party (the assessee) during the financial year 2011-12". Copy of sale deed available at pages 108 to 155 shows that the assessee company sold the land on 21.03.2007 which falls within the ambit of AY 2007-08 and as per recital in the sale deed the assessee had received sale consideration also at the time of execution and registration of sale deed on 21.03.2007.

11. Be that as it may, we note that despite the fact that during AY 2012-13 no transaction of sale of property/land was undertaken by the assessee but the assessee recorded book entries pertaining to the sale of property/land transaction, which was in fact, undertaken during AY 2007-08, in the books and financial statements for AY 2012-13 by passing books entries only. Therefore, respectfully following the principal of tax jurisprudence that the right income should be taxed in the right hands, under right head of income in the right year of assessment, we direct the Assessing Officer to tax

the income/profit accrued to the assessee from sale of land/property in AY 2007-08.
Grounds of assessee are partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.10.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 11th October, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi