

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'B' : NEW DELHI)**  
**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**  
**AND**  
**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**  
**ITA No. 9146/Del/2019, A.Y. 2011-12**

M/s. Dappled Paper Industries Pvt. Ltd. 206, Hans Bhawan 1 BSZ Marg New Delhi-110002 PAN : AABCD5741R	Vs.	ACIT, Circle 7(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Suresh Gupta, CA
Respondent by	Sh. Sanjay Kumar, Sr. DR

Date of hearing:	27.09.2023
Date of Pronouncement:	10.10.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Assessee against the order dated 24.09.2019 of CIT(A)-3, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 3/10158/2018-19 arising out of an appeal before it against the order dated 12.12.2018 passed u/s 147/ 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-7(1), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee has filed return which was processed u/s 143(1) however, the case of assessee was reopened u/s 147 of the Act on the basis of information regarding sale of immovable property. The assessee was served notice u/s 148

to which assessee responded and filed objections to reopening which were disposed off and subsequently, Ld. AO made the addition with following relevant finding ;

“3. On perusal, it is observed that the assessee sold the property no. A-64, Sector-4, Noida on 28.10.2010 for a total consideration of Rs. 94,02,000/-. Assessee reduced from the sale consideration a sum of Rs. 2,83,400/- as Transfer charges and Extension charges paid on 10.03.2011. Total Net consideration as shown by the assessee is Rs. 91,18,500/- (9402.000 2,83,400). Therefore, the claim of Rs. 2,83,400 is not allowable as it is not in respect of the property sold. Further, the assessee has reduced a sum of Rs. 15,00,229/-(Cost of acquisition) from the Net consideration and has shown Rs. 76,18,371/- as Short Term Capital Gain u/s 50 of the IT Act. The amount of Rs. 15,00,229/- includes 11,55,500/- towards cost of construction dated 20.10.2010. Further perusal of the invoice dated 15.09.2010 (just before the date of sale) reveals that assessee has carried out certain renovations, payment for which has been made subsequent to the date of sale. Therefore, cost of construction of Rs. 11,55,500/- debited on 20.10.2010 is not allowable under the provisions of LT. Act, 1961.

Therefore, sum of Rs. 2,83,400/- as Transfer charges and Extension charges paid on 10.03.2011 & Cost of construction of Rs. 11,55,500/- debited on 20.10.2010 are disallowed.

Disallowance:-

Transfer charges and Extension charges paid on 10.03.2011       Rs.  
2,83,400/-

Cost of construction debited on 20.10.2010                       Rs. 11,55,500/-

**(Total Disallowance: Rs. 14,38,908/-)**

Accordingly the total Income of the assessee is taken as under:

Income (As per ITR) Disallowance:                                       : Rs. 79,89,900/-

**Disallowance :**

Transfer charges and Extension charges paid on 10.03.2011   : Rs. 2,83,400/-

Cost of construction debited on 20.10.2010                       : Rs. 11,55,500/-

Total taxable Income   :Rs. 94,28,800/-

Total taxable income (Round Off)                                       :Rs. 94,28,800/-

Assessed, accordingly at total income of Rs. 94,28,800/-(Ninety Four Lakhs Twenty Eight Thousand Eight Hundred Only). Give credit for pre-paid taxes, if any. Issue demand notice & necessary forms and charge interest as per the provisions of the Income Tax Act.”

3. Ld. CIT(A) has sustained the addition with following relevant findings :

*“5.1 From the details furnished during the course of assessment proceedings, the AO observed that the appellant has sold a factory building at Noida for Rs. 94,02,000/- and the appellant has claimed a sum of Rs. 2,83,400/- as transfer charges and extension charges. The AO further observed that these charges paid by the appellant were not related to this property and therefore, the AO has disallowed the same. However, in appeal, it has been submitted that the appellant had sold another residential plot at Noida on 27.03.2011 for Rs. 40 lakhs and has shown short term capital gains of Rs. 32,405/- from this property in the ITR and by mistake, the appellant has claimed the transfer charges against the sale of factory building instead of the residential plot to which these charges pertained. In this regard, the AR has furnished the copy of pay order in the name of Noida Authority for payment of Rs. 1,25,000/- and Rs. 1,58,400/- totaling Rs. 2,83,400/-. However, from the pay orders, it is not clear that these payments have been made with respect to any of the two properties sold by the appellant. In view of this, I am of the opinion that the AO has rightly made the disallowance of Rs. 2,83,400/- and the same is upheld.*

*5.2 The appellant has also claimed a sum of Rs. 11,55,500/- towards cost of construction/renovation dated 20.10.2010 with respect to the sale of factory building while computing deemed short term capital gains in the schedule of fixed assets as the factory building was a depreciable asset of the appellant. The AO noted that the property was sold on 20.10.2010 whereas the payment for construction was made after the date of sale of property and therefore, the AO has disallowed this sum of Rs. 11,55,500/-. In appeal, the AR has furnished a copy of the invoice dated 15.09.2010 issued by M/s Sumo Buildcon Pvt. Ltd., U-18, Shakarpur, Delhi-110092. It has been contended that the appellant had made the payment after the sale of property but the renovation work was undertaken prior to the same. In this regard, the AR was asked vide order sheet entry dated 04.09.2019 to clarify why the contractor M/s Sumo Buildcon Pvt. Ltd. did not include local taxes like VAT etc. in the bill if the bill is genuine. A perusal of the bill and its appearance shows that the bill is fabricated. It is a simple computer printout and is not showing any telephone numbers, VAT No., TIN No. etc. on the bill. The said bill is scanned as under:*

*5.3 In response, the AR submitted vide letter dated 19.09.2019 that the gross turnover of M/s. Sumo Buildcon Pvt. Ltd. during that period was below Rs. 20 lakhs and therefore, it was not registered under the Delhi VAT Department. However, it is observed that the maximum threshold limit for registration with VAT Department*

during FY 2010- 11 was Rs. 10 lakhs and not Rs. 20 lakhs. When this fact was brought to the notice of the AR, he had no reply. It is also to be noted that if the contractor was a small contractor having marginal receipts, such a contractor in normal practice undertakes the contract after receiving advance payment and does not wait for months together for payment after completion of the work. The fact that payment was made through bank only shows that the appellant has done better planning to obtain bogus bill. All the above facts show that the appellant has produced a bogus bill in respect of renovation charges in order to reduce the quantum of short term capital gains. In view of these facts, the addition made by the AO by disallowing renovation/construction expenses of Rs. 11,55,500/- is upheld and the ground of appeal is dismissed.

4. The assessee is in appeal raising following grounds :-

*“1. The Ld. CIT(A) has erred in law in upholding the assessment proceedings u/s 148 where the initiation of proceedings is itself bad in law*

- a) There is no reason to believe and there is no escapement of income.*
- b) Completely wrong irrelevant and non existing reasons.*
- c) Notice u/s 148 issued only for the purpose of verification.*
- d) Mandatory procedure laid down in the act has not been followed.*
- e) Initiation of Proceedings u/s 148 is contrary to provisions of law.*
- f) Proceedings are time barred.*

*3. The Ld. CIT(A) has erred on facts and in law in disallowing the transfer charges & extension charges from sale consideration which was Rs. 2,83,400/-.*

*4. The ld. CIT(A) has erred on facts and in law in disallowing the renovation expenses from sale consideration which was Rs. 11,55,500/- considering it as bogus expense.*

*5. The Ld. CIT(A) has passed the order without taking into consideration assessee's representation, acting against law of natural justice and without allowing reasonable opportunity.*

*6. The learned CIT(A) has erred on facts and in law by not adjudicating ground of initiation of penalty proceedings u/s 271(1)(c) without any material on record.”*

5. Heard and perused the record.

6. Ld. AR after pointing out the discrepancies and shortcomings in the reopening primarily stressed on the merits of the matter submitting that Ld. Tax Authorities have fallen error in making the additions while Ld. DR has submitted that there is no error in the findings.

7. It can appreciated with regard to the ground no 3 and 4 that the disallowance of Rs.2,83,400/- has been made by the Ld AO for the reason that this expenditure pertains to different property i.e. Plot No. A- 223, Sector 122, Noida and not the property against which expenditure has been claimed. Revenue does not dispute that this expenditure is a allowable deduction as cost of improvement u/s 48(ii) of the Act. The copy of the evidence of payment of transfer/extension charges are placed in paper book at page 77 and the same has been debited in assessee bank account on 10.03.2011 (PB 92). The assessee has claimed this deduction by mistake against the other property. We are of considered view that as the assessing officer was making reassessment u/s 147 of the Act, he was not justified in making the disallowance as the above expenditure was otherwise considerable as such for computation of deduction of short term capital gain for the property at Plot No. A-223, Sector 122, Noida, for which too assessee had reported the STCG.

8. The second disallowance is of Rs.11,55,500/- incurred as cost of construction or renovation. The Id AO has rejected the claim for the reason that invoice dt: 15.09.2010 issued by the contractor is prior to the date of sale deed 28.10.2010 (PB 91) but payment was made subsequently. The Ld CIT(A) in para 5.2 at page 3 has questioned the genuineness of above expenditure for the reason that no telephone number, VAT/TIN number has been mentioned in the bill and there is no charges of VAT levied in the bill. The explanation of the appellant that the turnover of the said contractor was below Rs.20,00,000/- was the reason for non-charging of VAT was rejected on the ground that VAT provision, the turnover exemption is Rs.20,00,000/- and not Rs.10,00,000/-.

9. Ld. AR has submitted that the above expenditure is supported by the contractor bill and same was not found to be fake or the party issuing the same is also not found to be non-existent. Simply because no tax is charged cannot be the reason for disallowance when payment has been made after deduction of TDS through account payee cheque. The non-compliance of other provision has other implications under the respective act on the contractor and this cannot be ground for disallowance of expenditure claimed as deduction.

10. After taking into consideration the facts of the case it comes up that in original assessment assessee had reflected that sale of this depreciable asset in the P&L Account and upon which STGC was declared. The balance sheet also reflected the deletion of this asset. We are of considered view that as it is case of re-assessment, the burden was on AO to show that there was a wrong claim on account of any expenditure like renovation expenses. There seems to have been no enquiry from the concerned contractor too and merely due to absence of certain details of party issuing bills on presumption, the bill is disbelieved by Ld. CIT. Ld. CIT(A) has fallen in error in not considering that burden was on AO to show that there was an incorrect claim in original assessment and he failed to discharge that burden at first instance even.

11. We are inclined to allow these grounds on merits and **allow the appeal of assessee**. Consequently, the re-assesement order is set aside.

**Order pronounced in the open court on 10<sup>th</sup> October, 2023.**

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

*Date:-10.10.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI