

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 2130/Mum/2023**

(Assessment Year 2017-18)

DCIT, Cir-14(3)(2)  
Room No. 1905, 19<sup>th</sup> Floor, Air  
India Building, Nariman Point,  
Mumbai-400021

Vs.

Sentinel Properties Pvt. Ltd.  
759/34, Bhosale Pavillion,  
Bhandarkar Road, Deccan  
Gymkhana,  
Maharashtra-411004

**(Appellant)**

**(Respondent)**

**PAN No. AAKCS7147K**

**Assessee by** : Shri. Sanjay N. Kapadia CA

**Revenue by** : Shri. Kishor Dhule, CIT DR

**Date of hearing:** 04.10.2023

**Date of pronouncement :** 27.10 .2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by The Deputy Commissioner Of Income Tax, Central Circle – 6 (1), Mumbai [ The Ld AO] against appellate order passed by The Commissioner Of Income Tax, (Appeals) – 54, Mumbai (The Learned CIT – A) for assessment year 2017 – 18 dated 17/ 03 /2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of The Income Tax Act, 1961 (The Act) dated 30/12/2019 by the learned assessing officer, was allowed.



02. The learned AO is aggrieved with appellate order and has following grounds of appeal in memorandum of appeal:-

- i. On the facts and circumstances of the case and in law, the learned CIT (A) erred in holding that the compensation paid by the assessee for the closure of agreement entered with M/s Emtelle India private limited is an allowable expenditure.
- ii. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not appreciating the fact that the assessee has not received any consideration from M/s Emtelle India private limited, therefore, there is no valid agreement for sale between the assessee and M/s Emtelle India private limited
- iii. On the facts and circumstances of the case and in law, the learned CIT (A) erred in not appreciating the fact that assessee has sold this property to M/S Casme industrial park development (India) private limited, vide agreement dated 12/8/2016 wherein it was clearly stated that the vendor is the absolute owner of the said land and the sale is free from all or any encumbrances and no other person or persons has have any right, title, interest, claim or demand of any nature, therefore, M/s Emtelle India private limited has no right in the said land whatsoever, therefore, the claim of compensation is not allowable.



03. Short dispute in this appeal is that whether the party to whom compensation paid by assessee is allowable as deductible expenditure in real estate development business of assessee or not.
04. Bare facts show that assessee is in business of land development and had over the years bought several parcels of land. It is engaged in property development business. It filed return of income on 31/10/2017 showing total income of ₹ 23,955,760/- as per normal computation of taxable income and computed book profit under section 115JB at ₹ 24,011,587. This return of income was picked up for scrutiny and necessary notice under section 143 (2) was issued on 14/8/2018.
05. During the course of assessment proceedings the learned assessing officer found that assessee has paid a compensation of ₹ 159,954,736/- to a private limited company namely Emtelle India Ltd. When questioned, assessee submitted that the company had entered into agreement for sale without possession with the above company of entire non-agricultural land. As later on the assessee was able to fetch better prices of the property at ₹ 1523.90 per square meter from the present buyers, as a commercial prudent businessmen, assessee cancelled the earlier regular agreement entered into with Emtelle India private limited by compromise compensation paid of ₹ 148.50 per square meter charged to the profit and loss account as deductible expenditure. Copy of agreement as well as the deed of settlement for



cancellation was submitted before the AO. Assessee submitted that assessee is in the business of land development and has purchased parcel of land at Gujarat which could not be developed and sold due to various commercial and regulatory reasons and therefore the activity could not take of as expected. Assessee acquired the land in the year 2008 but till 2016 such land could not be converted into non-agricultural land and remained in the name of sellers to assessee. Approximately 10,77,143 m<sup>2</sup> of land was acquired by assessee as non-agricultural land disclosed in the annual accounts of the company as stock in trade. The Emtelle India Pvt Ltd approached the assessee with a view to acquire the above land for setting up a larger industrial plant/factory for its operation. This company had already manufacturing base at another place and it intended to have large parcel of land at only one place setting up at the land of the assessee. Though the price offered by that company was very high but as they were, acquiring more of the land by single document and setting up of industries would have enabled converting the surrounding agricultural land owned by the assessee into nonagricultural land, which would have fetched better sale price for other properties, assessee agreed with the party. However, as the purchasing party was not a developer of land and stated that it would purchase land only if it could obtain the investors and lenders for the project, otherwise, it will not have any purpose of buying such a huge land. Assessee was also asked to enter into terms in writing so that the buyer could be able to approach investors as well

as institutions and banks for lending of the project. It also gave 3 post dated cheques to the assessee payable over a period of 3 years. This was just to show the investors and lenders that the land purchase has been tied up subject to arrangement of the finance. The agreement was entered into on 4/1/2016 without handing over possession to that party. Thus, the essence of the agreement with Emtelle was that there was an agreement at agreed price without possession where consideration was to be paid by post dated cheques.

06. Later on assessee, despite agreement with Emtelle , due to sudden rise in the prices, was approached by the other buyers namely casme industrial park development private limited for purchase of 468,921 m<sup>2</sup> and second buyer of 28,834 m<sup>2</sup> and third buyer of 10,320 m<sup>2</sup>. Thus out of 10,77,143 m<sup>2</sup> assessee sold 508,075 m<sup>2</sup> of land. The price offered by these parties was many times higher than the price at which the assessee agreed to sale to Emtelle India private limited. Therefore, assessee went ahead by selling this property to those buyers without informing the new buyers that there is already an unregistered pre existing agreement with the Emtelle Company to avoid any delay in the sale. Such sale agreements were also entered into on 12/8/2016.
07. Subsequent to sales, assessee approached Emtelle India private limited and entered in to settlement / compensation for cancellation of the deal. That company agreed for compensation of Rs 148.50 per square meter

and cancellation deed was executed on 10/1/2017 by which the assessee paid compensation of ₹ 159,955,736/- in October 2017.

08. Thus claim of the assessee is that in the above circumstances an agreement entered into with the above company is a valid, post dated cheques are also a valid promised consideration, agreement to sale can be entered against a consideration promised to be paid and further all the transactions are bona fide and verifiable between non related parties. Those are also valid in terms of the provisions of Indian Contract Act 1872 and The Transfer Of Property Act 1882. The assessee also relied on several judicial precedents on this issue of several honourable High Courts. Thus the assessee stated that the above compensation is allowable under section 37 (1) of the act as it is a revenue expenditure incurred wholly and exclusively in the business of real estate development by the assessee , relying upon several judicial precedents such as

- i. Gopal Das estate and housing private limited versus CIT 103 taxmann.com 334 (Delhi)
- ii. CIT versus Lubrizol India Ltd 37 taxmann.com 294 (Bom)
- iii. Deputy Commissioner of income tax versus Vatika townships private limited (36 taxmann.com 283) (Del)

iv. Kaushlya Devi versus CIT 404 ITR 136 (Del)

09. Learned assessing officer rejected explanation of assessee for the reason that :-

- i. in absence of consideration paid by the company, no right arose in favour of that company and therefore, in absence of such right compensation paid by assessee to that company is not allowable as deductible expenditure,
- ii. when assessee sold property to other buyers, there was no mention of the pre-existing right of this company to the compensation is paid, therefore, assessee contended before them that there is no previous right of anybody in that property, thus, assessee has made a contradictory statement,
- iii. AO issued notices under section 133 (6) to the bankers of that company for which the post dated cheques were issued, it was found that those cheques were issued to that company after the date of the agreement, somewhere in March 2017.

Accordingly, for these reasons the compensation paid by the assessee to Emtelle India private limited was disallowed. Accordingly assessment order under section 143 (3) was passed on 30/12/2019 assessing the total income of the assessee at ₹ 183,911,496/- against the returned income of ₹ 23,955,760/-.



010. On appeal before the learned CIT – A, assessee explained the nature of the transaction entered into of sale and compensation paid, what is the nature of the business of the assessee. It was submitted that the land was sold at the price of Rs. 1530.97 per square meter, as there was a pre-existing claim or agreement with the company, the compensation of ₹ 148.50 per square meter was paid to that company and therefore same was allowable to the assessee as deduction. Before him, assessee relied upon section 10 of the Indian contract act stating that what are the agreements which can be said to be the contract and provisions of section 54 of The Transfer Of Property Act coupled with the several judicial precedents that a promise to pay in future to the assessee by the company is a valid consideration therefore agreement for sale entered by the assessee with that company is a genuine agreement which is binding contract on the assessee as well as that company as that company has acquired the rights under the agreement which were to be settled by paying consideration for breach of contract. With respect to post dated cheques issued to the assessee by that company, assessee gave the numbers of the cheque, and date of such cheque, it was submitted that such cheques were issued to that company by its bankers on 17 October 2015. The agreement was entered into on January 4, 2016. The assessee substantiated this by placing certificate from the bankers of the company. Regarding the claim of the AO that this agreement is an afterthought, it was submitted that the agreement dated 4 January

2016 is executed on non judicial stamp paper dated 13 October 2015, Assessee also referred to the annual accounts of the assessee, which contains the note with respect to the agreement executed by the assessee with the above company in annual accounts for financial year 2015 – 16 in which the reference of the agreement dated 4 January 2016 is also made. Thus it was claimed that

- i. transactions of payment of compensation by the assessee to the above company is a genuine transaction having a valid consideration which was intended to be executed with the consent of both the parties,
- ii. cheques issued to the assessee by the company on the date of signing of the agreement are in the nature of post dated cheques, which is a valid consideration, till buyer fails to pay consideration
- iii. AO has overlooked that the previous cheques were already debited in bank statement of the company earlier,
- iv. the person who signed the cheques in January 2016 on behalf of that company had already left the organization in February 2017, so it could not have been an afterthought
- v. Agreement dated 4 January 2016 has been executed on stamp paper dated 13 October 2015 and therefore, it cannot be afterthought,



- vi. in the annual accounts of the assessee for the year ended on 31/3/2016 the assessee has disclosed the above transaction in the notes on accounts, therefore also it cannot be an afterthought.
- vii. Buyer company is a public limited company which has also disclosed the above transaction in its annual accounts,
- viii. both the companies i.e. assessee as well as to whom compensation is paid are not at all related parties, either under The companies Act or Under The Income Tax Act
- ix. transaction has the commercial reasons and does not have any other consideration,
- x. the claim of the learned assessing officer that the recipient company has huge carry forward of losses is incorrect as for assessment year 2017 - 18, that company has started showing the positive income,
- xi. as the recipient company has issued only the post dated cheques for the reasons stated above, there could not have been any accounting in the books of that company as there was no consideration in fact paid, but that does not prove that the transaction is not genuine,
- xii. the AO did not consider the transaction as proper ignoring the realities of real estate business,



xiii. the learned AO disregarded the judicial precedents cited before him without any reason.

011. The learned CIT – A held that agreement executed between the assessee and the company was not an afterthought and not a sham agreement between related parties. It is further proof that the parties are not related. The Notes on accounts provided in the annual accounts of the assessee for financial year 2015 – 16, use of stamp paper, the post dated cheques demonstrated by the certificate and agreement was not doubted and therefore following the various decisions of the High Court, he deleted the disallowance holding that payment of compensation in the course of business of real estate is allowable.

012. Aggrieved by the order of the learned CIT – A the learned assessing officer is in appeal before us. The learned CIT DR submitted that:-

- i. agreement between the parties is without any consideration
- ii. agreement is between the related parties
- iii. agreement is an afterthought
- iv. there was no reference when the property was sold to the other buyers that there is a pre-existing right of the company to whom compensation is paid

- v. there was no disclosure in the annual accounts of the buyer to show that any right or right in the property is owned

Accordingly it was submitted that the learned CIT – A has deleted the disallowance incorrectly which was disallowed by the learned AO giving so many reasons. It was stated that the agreement is an afterthought and the claim of the assessee is not genuine.

013. The learned authorized representative submitted a paper book containing 179 pages wherein several judicial precedents were cited and annual accounts of the company to the compensation paid along with the computation of total income as well as the annual accounts of the assessee along with the other documents for submitted. He mostly relied on the submission made before the learned CIT – A. He referred to the decision of the learned CIT – A wherein it has been upheld that the agreement is genuine, the compensation paid by the assessee is allowable as expenditure.

014. We have carefully considered the rival contention and perused the orders of the lower authorities. Briefly stated the fact shows that assessee is a company that is engaged in the business of real estate. During the year assessee has sold the plot of land for ₹ 775,150,266/- , in other expenses the assessee has debited a compensation charges of ₹ 159,955,736/-. As in the beginning of the year the assessee was holding the inventory of plot of land



at ₹ 980,715,311, the Project expenditure and the changes in the inventory of the work in progress was ₹ 591,615,402/- and accordingly profit from the real estate were disclosed at ₹ 24,011,587/-.

015. Notes on accounts at serial number 2.18 onwards states that:-

"2.18 in the state of Gujarat, a non-agriculturist cannot purchase agricultural land unless such land is being converted from agricultural land status to nonagricultural land. The management had made their best efforts for such conversion and able to convert 146,003 and 96 m<sup>2</sup> of agricultural land since 2011 however 11,63,132 m<sup>2</sup> of land is still pending for conversion because of pending litigation is, revenue procedures. Therefore, such parcel of land is shown as a write-in cost of plot. As such, rights are under dispute and litigations are going on therefore with a view to show true and fair presentation, such rights of cost of plot are required to be written off. It may be noted that the possible acid that arise in from past events, the existence of which will be confirmed only by the occurrences/non-occurrences of uncertain future events not wholly within the control of the enterprises, such contingent assessee is required to be return of two comply with the provisions of AS 29 read with AS2.

2.19 in respect of certain agreements for purchasing agricultural lands entered into by the company with farmers, the company has learned that the farmers have created third-party rights for the same lands while the said agreements are subsisting. Accordingly, the company has filed lawsuits against such farmers and the matters are with court.

2.20 The company has filed suits against the vendor's, farmers who have tried to raise dispute to the right of the company over companies land. The

matters are under court, arbitration as per the order of the honourable city civil Court.

2.21 The company had earlier planned to development / redevelopment of land at village sachana at the time of acquisition of such land. However, on account of non-receipt of requisite permissions over the period and on account of non-viability of such projects due to recession in real estate sector in sachana vicinity, the company has abandoned the said project during the year under review. The similar view was envisaged by the statutory auditor in the past. It is needless to mention that an abandoned operation would be discontinuing operation as per A as 24 accordingly the other project expenditure incurred amounting to ₹ 442,627,870/- has been written off during the year to present true and fair view.

2.22 The company has entered into agreement for sale without possession with Emtelle India Ltd of entire nonagricultural land. The management was able to get much better price of ₹ 1523.90 per square meter from present buyer and therefore for the purpose of commercial prudence, the management cancelled the said agreement by arriving at an amicable compromised compensation/damages at the rate of ₹ 148.50 per square meter for such cancellation and the same has been charged to profit and loss account under review."

016. Thus the profitability on sale of plot of land of Rs. 77,51,50,266/-, if the other project expenditure written off during the year of ₹ 442,627,870/- is excluded, the profit thereon is ₹ 47.30 crores even after payment of the above compensation. This income is offered for taxation by the assessee.

017. Assessee in its annual accounts for 31 March 2016 [Earlier year] also at note number 2 - 17 has disclosed that the



company had entered into an understanding for sale without possession with the above company of entire non-agricultural land. The assessee is able to get much better prices from other buyers and therefore for the purpose of commercial prudence the management is in process of cancelling the said understanding by arriving at amicable compromised compensation/damages for such cancellation. Thus, in the annual accounts for 31 March 2016 the assessee has already disclosed that there was an agreement pre-existing with the company to whom the compensation is paid. For the year ended on 31<sup>st</sup> of March 2016, the compensation was not finalized. Thus, it does not make any difference whether the sales deed to the buyers disclosed that whether there is pre-existing right of some body or not as the matter is already disclosed in the annual accounts of earlier years also. Even otherwise, non mentioning in sale deed of a pre-existing right of that company, would not make the pre existing right invalid, if found to be genuine.

018. Emtelle India Ltd (formerly known as Parrixit industries Ltd), for assessment year 2017 - 18 is engaged in the business of micro-irrigation system, pipe fittings etc. In its annual accounts for the year ended on 31 December 2017 in note, number (20) revenue from operations has disclosed the damages on cancellation of contract of ₹ 159,955,736/- as its income. That company has earned a total income of ₹ 1,071,805,943/- for that year.



019. The Post dated cheques cover the agreement entered into by the assessee with the company to which the compensation is paid. It is undisputed that there is an agreement, which was executed on a non-judicial stamp paper between the assessee and the company to whom the compensation is paid. There is no dispute that compensation has already been paid by the assessee and it has been recorded as an income by the recipient. It is also not in dispute that position was not given to that party to whom compensation was paid. It is also not necessary that such agreement needs to be registered agreement. Had post-dated cheques been deposited by the assessee, were dishonored, then in that case the agreement did not have any evidentiary value. However, that eventually has not happened. The issue is that the consideration is by post-dated cheques, Those cheques were never encashed by the assessee. Subsequently the agreement was cancelled and that company was paid compensation by the assessee. In such case, if the post dated cheques, if deposited by the assessee as a consideration, and such post-dated cheques are not honoured, then naturally the agreement to sale would have been without consideration. Prior to that, the agreement was cancelled and because assessee is getting more consideration, it paid compensation to the party who had right of enforcing the assessee of performance of that agreement. Issue is whether the assessee by entering into an agreement and accepting post-dated cheques has created a right in favour of the party to whom the



compensation is paid. It is also not necessary that such agreement needs to be registered agreement. Had post-dated cheques been deposited by the assessee, were dishonored, then in that case the agreement did not have any evidentiary value. However, that eventually has not happened.

020. The issue is whether the agreement made is an afterthought; the claim of the AO is that the post dated cheques issued by that company to the assessee were not at all issued by the bankers to that company when the agreement was entered into, therefore, that company could have issued those post dated cheques to the assessee. The assessee is explained that that check number 3639, 3640 and 3641 were issued to the assessee on 17 October 2015, which is before the date of signing of the agreement of January 4, 2016. This was substantiated by the certificate obtained from the bank. Assessee also obtained the bank statement of that company before the learned CIT - A for this proposition. Assessee also obtained the confirmation from the recipient of the compensation and the signatory of the cheque. The signatory of the cheque was not in the job with the company in 2017 onwards. Though it is argued that as the signatory of the cheque has already left the job with Emtelle, why he would sign cheques in 2017 and take responsibility. Therefore, these cheques are not back dated cheques. However, it may not be conclusive but it supports the claim of the assessee. The agreement was



also executed on non-judicial stamp paper dated 13 October 2015. The disclosure in the annual account of the assessee as on 31<sup>st</sup> of March 2016, cumulatively all these circumstances does not prove that the payment of compensation is an afterthought.

021. The assessee and the company to whom compensation paid are not related parties either under the companies act or under the income tax act for the reason that both of them have not disclosed each other in the related party disclosures in their annual accounts and also in tax audit report. Therefore, collusion between the parties also cannot be established.
022. The compensation paid by the assessee is merely 10% of the sale consideration which the assessee has received i.e. sale consideration of ₹ 1534 per m<sup>2</sup> whereas the compensation is only ₹ 148 .50 per m<sup>2</sup>.
023. The notes on accounts of the assessee shows that assessee has also right over certain land but same are also disputed. The assessee does not have to disclose such an incident. Therefore nature of the business supports the claim of the assessee, as such transaction are usual.
024. Thus, in the above circumstances, it cannot be said that the company to whom the compensation has been paid did not have any right and therefore compensation paid by the assessee is not allowable. The fact shows that there is an agreement entered into by the assessee with an unrelated party which is documented on a non-judicial stamp paper

and sale price is agreed therein. The AO has not examined that party. The learned AO cannot deny that if that party had asked for the specific performance of that agreement, the consideration much less per m<sup>2</sup> would have been received by the assessee, against the actual sale consideration offered of ₹ 1530.97 per square meter. If that be the situation then the income offered by the assessee on the sale of the above land to the extent of ₹ 1300 per square meter would not have been offered for taxation by the assessee. The Id AO did not examine recipient at all.

025. Thus we hold that M/s Emtelle India Private Limited has a pre existing right in the above land which has been surrendered by it in favour of assessee, for which compensation is paid.
026. While allowing the claim of assessee, Id CIT (A) has followed decisions of honourable Bombay High court in CIT V Lubrizol India Limited 37 taxmann.com 294, while that decision on allowability of expenses in case of Nitesh Estate [ P] Ltd V DCIT [ 141 taxmann.com Hon Karnataka High court has allowed compensation paid to a real estate developer when the payment of such compensation is closely related to the business of the assessee.
027. The claim of the assessee is allowable if it is connected with the business of the assessee and payment is proved. There is no dispute with respect to the payment. There is



also no dispute that same land for which compensation is paid has been sold, profit thereof is offered for taxation as business income. It is not the case of revenue that expenses of compensation incurred by assessee is not allowable as deductible expenses. Only reason for disallowance is that it is an afterthought and claim is not genuine. Allegation of Id AO is that agreement between assessee and Emtelle was an afterthought. Assessee has shown the annual accounts, agreement, claim of payment, certificate of banker, business justification, disclosure of compensation in annual accounts of recipient company shows that it is not an afterthought. Hence, we confirm appellate order of Id CIT (A). Thus, all the grounds in appeal of Id AO are dismissed.

028. In the result, appeal of Id AO is dismissed.

Order pronounced in the open court on 27.10.2023.

Sd/-

(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.10.2023

*Dragon*

Copy of the Order forwarded to :

BY ORDER,

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai