

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Aby T. Varkey (JM)

I.T.A. No. 2345/Mum/2023 (A.Y. 2013-14)

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| Gauri Construction Company 16 th Floor, B Wing, Mittal Tower, 210 Nariman Point Mumbai-400 021. PAN : AAAFG6256E (Appellant) | Vs. | ACIT, Circle-17(1) 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent) |
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| Assessee by | Shri Nitesh Joshi |
| Department by | Shri Raj Singh Meel |
| Date of Hearing | 30.01.2024 |
| Date of Pronouncement | 31.01.2024 |

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 03-05-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of expenses amounting to Rs.2.35 crores made by the AO.

2. The facts relating to the issue are discussed in brief. The assessee is engaged in the business of construction and sale of office spaces. In the earlier years, it had purchased a land and proposed to develop project consisting of five towers, viz., A1, A2, B1, C1 and D1. However, the assessee constructed Tower D1 only. The occupation certificate for D1 was received from Pune Municipality on 19-07-2011. It is submitted that the construction of all flats in Tower D1 were also completed and handed over to the buyers in FY 2011-12 relevant to AY 2012-13. However, the assessee did not offer any income in the assessment year 2012-13. The reason cited by the assessee was that it was following Percentage Completion Method and it considered

construction of all five towers as a “single project”. Under Percentage completion method, the requirement to offer proportionate income shall arise only when the stage of construction exceeds 25% of the total project. It was submitted that the construction of Tower D1 was equivalent to around 21.80% of the total project and since it was less than 25% of the total project, it did not offer any income.

3. However, the assessee offered entire sale proceeds relating to Tower D1 in Assessment Year 2013-14. The explanation given by the assessee was that the assessee took the decision to abandon construction of remaining four towers in the financial year relevant to AY 2013-14. Hence it has offered entire revenue relating to Tower D1 in assessment year 2013-14. The AO also accepted the same.

4. The AO noticed that the assessee has claimed various expenses to the tune of Rs. 2,35,05,021/- as deduction. The AO noticed that these expenses have been incurred during the financial year relevant to AY 2013-14. Since the assessee had completed construction of Tower D-1 in the preceding year itself, the AO took the view that the above said expenses are not related to the above said project and accordingly disallowed the same.

5. Before Ld CIT(A), the assessee furnished break-up details of expenses of Rs.2,35,05,021/- under three heads, viz., Construction expenses, Establishment Expenses and Interest expenses. With regard to the construction expenses, the assessee has submitted that they were incurred in respect of Tower D-1 only and they consisted of either payment of pending bills or expenses incurred towards completion of pending works. With regard to the Establishment expenses, it was submitted that they are in the nature of day to day expenses incurred in carrying on the business of assessee. It was submitted that the interest expenses are related to the loans borrowed for the purpose of business of the assessee.

6. The Ld CIT(A) examined the conveyance deeds of individual buyers of flats and noticed that it contained clauses that the expenses, if any, incurred after handing over of the flat shall be borne by the buyer. Accordingly, the Ld CIT(A) took the view that various construction expenses claimed by the assessee should have been borne by the buyers. Accordingly, he held that the additional claim of Rs.2.35 crores made by the assessee is not allowable. He further noticed that these expenses have been incurred on the entire piece of land held by the assessee, while a portion of land only pertained to Tower D1. Accordingly, the Ld CIT(A) held that these expenses cannot be considered to have been incurred exclusively for Tower D1. Accordingly, he took the view that under "Revenue Cost matching principle", these expenses cannot be allowed. Accordingly, the Ld CIT(A) upheld the disallowance.

7. Aggrieved, the assessee is assailing the order passed by Ld CIT(A).

8. We heard the parties and perused the record. We notice that the assessee had purchased land in the earlier years and has proposed to construct five towers. Even though the construction of all the flats in Tower D1 was completed and sold in the immediately preceding year, the assessee did not offer any income on sale of flats of Tower D1 in that year. However, the assessee has offered entire income relating thereto during the year under consideration. The assessee has also furnished a credible reason for doing so. We notice that the AO has accepted the said reasoning and also accepted the revenue so disclosed by the assessee in the current year.

9. The AO noticed that the assessee has claimed a sum of Rs.2,35,05,021/- as expenses during the year under consideration. As noticed earlier, the AO took the view that these expenses are not related to Tower D1 and accordingly disallowed the same. The Ld CIT(A) took the view that there is no obligation on the part of the assessee to incur these expenses and further it defies the matching principle.

10. However, it was submitted before us that the assessee has incurred construction expenses which are in the nature of either pending bills or pending works related to Tower D1 only. In this regard, the assessee has furnished additional evidences to prove the above said submission. There should not be any dispute that the expenses incurred towards Tower D1 should be allowed as deduction, even if it has been incurred after sale of all flats. This is so because, it is also quite common that the builder would be incurring expenses on development of common areas even though entire flats have been sold. The individual flat buyers would not be incurring expenses required to be incurred in common area. Obviously, it is the responsibility of the builder. Further, it cannot be said that the expenses incurred on pending works/pending bills would defy matching principle. Hence the observations made by the Ld CIT(A), in our view, are not correct. Since the assessee has furnished additional evidences to prove that the construction expenses are related to Tower D1 only, in the interest of natural justice, we admit them. Since it requires verification at the end of the AO, we restore the issue relating to construction expenses to the file of the AO for examining the additional evidences.

11. With regard to the establishment expenses and interest expenses, the Ld A.R submitted that the assessee, being in the real estate business, continued to carry on its business, i.e., it has developed the remaining land and maintained its business activities. Hence it was incurring normal establishment expenses and interest expenses. He also submitted that the assessee has sold the remaining land in the subsequent year and has also offered it as business income in AY 2017-18. Accordingly, he submitted that the establishment expenses and interest expenses should also be allowed. In this regard, the Ld A.R furnished a statement titled as "Detailed working of profit on sale of balance land in AY 2017-18".

12. In our view, if the assessee is maintaining its business establishment and continue to carry on business activities, then the routine establishment expenses and interest on loan taken for general business purposes is required to be allowed as deduction, i.e., there is no requirement to link them to the Tower D1. The case of the assessee is that it has continued its business activities by maintaining and developing the remaining land. Since the assessee has furnished new explanation before us, we are of the view that the issue relating to establishment expenses and interest expenses are also require fresh examination at the end of the AO.

13. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of the AO for examining them afresh by duly considering additional evidences in accordance with the principles discussed above. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

14. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced on 31.1.2024.

Sd/-
(Aby T. Varkey)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 31/01/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai