

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE: SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER,**

**ITA No:- 6291/Del/2019
(Assessment Year: 2015-16)**

Regency Land and Lease Holdings Pvt. Ltd., C-31, Stilt Floor, NDSE-II, New Delhi-110049.	Vs.	Dy. Commissioner of Income Tax, Circle-21(1), New Delhi.
PAN No: AACRA570K		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 08.02.2024
Date of Pronouncement : 08.02.2024

ORDER

PER SAKTIJIT DEY, VP:

This appeal has been filed by the assessee against the order dated 23.05.2019 of Ld. Commissioner of Income Tax (Appeals)-38, New Delhi, pertaining to Assessment Year 2015-16. The assessee has raised the following grounds of appeal:

"1. Whether the Ld. CIT (A) has erred in interpreting provision of Section 37(1) after considering facts of the matter, raising the following questions:-

- i) THAT the Expenditure incurred for Rs.6,42,08,000/- on cancellation of decree, as per order of Hon'ble High Court of Delhi, on the property of the appellate is allowable expenses within the Scope of Section 37(1) of the*

- Income Tax Act, 1961, whereas property in question was held with the Appellant as Inventory in the form of stock in trade' meant for sale of Apartments as main Business of the Appellant;*
- ii) *THAT the Expenditure by the then Director for cancellation of Decree of the property of the appellant shall be considered as personal expenditure of the Directors OR the same has incurred for the benefit of the Appellant;*
 - iii) *THAT the expenditure incurred by the then Director in the Year 2011-12 and 2012- 13 and passed it on to the appellant during the AY 2015-16, when appellant has become capable to bear such expenses, shall be considered as Prior period Expenditure after considering the nature of business and also nature of expenses borne by the appellant;*
 - iv) *THAT the expenditure incurred on safeguard of Assets, held as 'stock in trade', of the Appellant by the then Director is a personal expenditure or should be charged to Profit and Loss of the Appellant when Appellant becomes capable to incur the same.*

2. THAT the Ld. CIT (A) erred in interpreting the provisions of Section 79 of the Income Tax Act, 1961 on appreciating the facts, in dis-allowing carry forward losses of Rs.2,11,406/-raising the following question:-

- i) THAT the losses to the tune of Rs. 17,364/- and Rs. 1,54,688/- has been incurred by the appellant Company during the A Year 2013-14 and 2014-15 respectively However, 100% Shareholding has been transferred during the Financial Year 2011- 12 i.e., much prior to the Losses incurred by the appellant Company.*

3. THAT the CIT (A) erred in dismissing the appeal in absence to hearing opted by the appellant. It is being submitting here that the appellant has absolutely no knowledge of the fixation of hearing on the dates mentioned in the Order in Appeal, itself except last such notice where upon hearing was affixed on May 23, 2019. The AR of the appellant tried to reach out to the office of Hon'ble CIT (A) but due to blockage of ways by police being counting votes of union poll. The AR sent communication through E-mail, but the same may be overlooked;

4. That the appellant craves leave to add, amend, delete or alter any one or more of the aforesaid grounds of appeal before or at the time of hearing of the appeal. “

2. When the appeal was called out, none appeared on behalf of the assessee to represent the case, and there was no request from the assessee's side seeking adjournment. From perusal of record, it is observed that since June 14, 2022, the appeal has been fixed for hearing on multiple occasions. Though, notices of hearing

were issued to the assessee both through postal mode as well as E-mail ID mentioned in the memorandum of appeal, however, the assessee has remained non compliant. This shows complete non-cooperation from assessee's side in pursuing the present appeal. Since sufficient opportunities have been granted to the assessee, it is deemed appropriate to proceed with the appeal ex parte qua the assessee after hearing Ld. Departmental Representative and based on material on record.

3. Briefly stated facts are, the assessee is a resident corporate entity and engaged in the business of construction and sale of residential buildings. For the Assessment Year under dispute, the assessee filed its return of income on 30.09.2015 declaring loss of Rs. 3,09,84,232/-. Assessee's case was selected for scrutiny. In course of assessment proceedings, the Assessing Officer called for various details from the assessee and, after examining them, was of the view that incidental expenses of Rs. 6,42,00,000/- claimed by the assessee for settlement of a decree were not allowable as business expenditure. Accordingly, he disallowed such expenses while completing the assessment U/s 143(3) of the Act. Contesting the disallowance, the assessee preferred an appeal before Ld. First Appellate Authority. However, Ld. First Appellate Authority upheld the disallowance with the following observations:

"On examining the facts of the issue, it transpired that the payments to the decree holder Mr. Shri Satish Khosla were made by Shri Suresh Pandey in his personal capacity which had been admitted by the assessee company. The liability of the assessee and personal liability of the director were different and personal liabilities had nothing to do with the liabilities of the company. Further there was no outgo and expenses of Rs. 6,42,08,000/- from the hands of the assessee company. The payments to Mr. Satish Khosla and other incidental expenses aggregating to Rs.6,42,00,000/- had been accounted for in the books of accounts of the assessee company in AY 2015-16 and actually these expenses were incurred in earlier years and did not pertain to expenses of this year under any scenario. There was sudden

disclosure of such huge expense in the books of the account of the assessee. Hence these were incurred in prior year and not in this year. In addition to the payment of Rs. 6,00,00,000/-, the assessee had also made payment of Rs. 42,08,000/- and there was neither any details of expenses nor any source of payments and evidences of genuineness of expenses was established by the assessee. The assessee had been confronted that there was neither any consequential asset or liability in AY 11-12, 12-13, 13-14 or AY 14-15 which was recorded by the assessee for these payments. The claim of expenses had been made for the first time in AY 15-16 when the property had been sold by the assessee resulting in avoiding of income arising on sale of capital assets. The expenses in settlement of decree were incurred in FY 2011-12 and FY 12-13 but said liability was not incurred by the assessee 'company and the assessee company had not explained any sources of funds in respect of meeting out the said liability in those years. Instead, it was admitted that the payments to Mr. Satish Khosla was made by the then director Shri Suresh Pandey in his personal capacity.

Keeping in view the detailed facts mentioned above. The incidental expenses of the Rs.6.42,08,00/-claimed by the assessee company is not an allowable expenditure u/s 37 of the IT Act, and also not related to the current year and is not the obligation of the assessee."

4. We have heard Ld. Departmental Representative and perused the materials available on record. The facts on record reveal that before the Assessing Officer, the assessee failed to establish that the expenses were incurred for the business. Before the First Appellate Authority, assessee did not appear and the appeal was decided ex-parte. Ld. First Appellate Authority has recorded a factual finding that the expenditure was incurred by Shri Suresh Pandey, one of the Directors of assessee Company, in his personal capacity and not towards the liability of the assessee.

4.1 He has further recorded that there was no out flow of expense from the assessee's company. He has further recorded a factual finding that the incidental expenditure was actually incurred in an earlier year and does not pertain to the year under consideration. No material or evidence has been brought on record by the

assessee to rebut the factual findings of Ld. First Appellate Authority. In view of the aforesaid, we do not find any reason to interfere with the decision of the first appellate authority. Accordingly, we uphold the addition by dismissing the grounds of appeal.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 08.02.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 08/02/2024

Pooja, Sr. P.S.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI

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