

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 380/KOL/2013
Assessment Year: 2009-2010**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-12, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, 7th Floor,
Kolkata-700069***

-Vs.-

***M/s. JKM Investment Pvt. Limited,.....Respondent
36, Bibhuti Bandopadhyay Sarani,
Kolkata-700019
[PAN: AABCJ2724L]***

Appearances by:

*Shri Subhankar Ghosh, A.R., appeared on behalf of the
assessee*

*Shri S. Datta, CIT (DR), appeared on behalf of the
Revenue*

**Date of concluding the hearing : February 08, 2024
Date of pronouncing the order : February 19, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 30.11.2012 passed for A.Y. 2009-10.

2. A perusal of the record would reveal that this is the second round of litigation before the Tribunal.

3. Brief facts of the case are that the assessee has filed its return of income on 30.09.2009 declaring total income at Rs.10,42,91,660/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) as well as 142(1) were issued and served upon the assessee. The assessee at the relevant time was engaged in purchase and sale of land. It has claimed a deduction of Rs.82,66,742/- towards leveling and fencing expenses. The ld. Assessing Officer has recorded the following finding on this issue:-

“Disallowance out of leveling and fencing expenses etc.:

It was submitted by the assessee vide letter dated 12.12.2011 that direct expenses of Rs.82,66,742/- were incurred for making the land to saleable condition at Indore during the year under consideration Assessee was asked to produce the supporting documents in respect of the above expenses claimed. The assessee company submitted the ledger account of fencing and leveling expenses at Indore and submitted bills for Rs.25,39,184/-. As the assessee did not furnish the supporting documents in respect of the remaining expenses of Rs.57,27,558/- in spite of several opportunities given, the same is disallowed and added to the total income of the assessee company. Penalty proceedings u/s. 271(l)(c) read with explanation 1 and section 274 are initiated separately for furnishing inaccurate particulars of income.

Total disallowance : Rs. 57,27,558/-“.

4. Dissatisfied with the order of ld. Assessing Officer, assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. 1st Appellate Authority has considered the issue and recorded the

finding in paragraph no. 8 of the impugned order. Since this is also a very brief finding, therefore, we deem it appropriate to reproduce it, which reads as under:-

“8. Appeal on ground no. 6 is against the disallowance of Rs.57,27,558/- out of assessee’s claim towards leveling and fencing expenses. The A.O. has disallowed Rs. 57,27,558/- out of Rs.82,66,742/- for leveling and fencing expenses on the ground that the assessee company could not produce relevant documents. The A.R. during the appellate proceed has submitted that the A.O. in his assessment order itself has mentioned that ledger account of fencing and leveling expenses were produced before him. The A.R. has submitted copies of same ledger accounts before me of all parties to whom payments were made for leveling and fencing at Indore. From these ledger accounts it is seen that payments were made mainly by account payee cheque to different parties, but payment of Rs. 2,10,474/- has been made either in cash or by credit card. Therefore, I think this amount is not allowable as the payment was made to established parties. Thus, disallowances under this head s restricted to Rs.2,10,474/-. Hence, assessee’s appeal on ground no. 6 is partly allowed”.

5. Dissatisfied with the order of ld. CIT(Appeals), the present appeal was directed at the instance of Revenue before the Tribunal. The Tribunal vide its order dated 19.01.2018 allowed this ground. The Tribunal has recorded a very brief finding. The Tribunal was of the view that assessee has not produced any evidence in support of its claim, therefore, ld. CIT(Appeals) was not justified to delete the addition of Rs.55,27,558/-.

6. Dissatisfied with the order of Hon'ble ITAT, the assessee carried the matter in appeal before the Hon'ble High Court vide ITA No. 43 of 2019 (G.A. No. 834 of 2019). Hon'ble High Court vide its order dated 09.04.2019 remitted the limited issue to the Tribunal for re-appreciation. The relevant directions read as under:-

“On hearing learned Counsel for the parties, it appears that this sum of Rs.55,27,558/- was paid by the assessee from its account. But for whatever reasons, they had produced only the ledger before the tribunal in proof of such payment, which was not accepted by it.

We give a chance to the appellant to prove its case. But we make it clear that they have to establish this case before the tribunal in a summary manner from the disclosed documents. There is no scope of any long drawn procedure of producing further documents adducing oral and documentary documents etc. If on the basis of the available evidence, the tribunal is able to convince itself that the above expense was actually incurred by the assessee and allowable, it will pass an appropriate order. Otherwise, it will simply re-affirm its order dated 19th January, 2018.

7. This order of the Hon'ble High Court dated 09.04.2019 was not brought to the notice of ITAT either by the parties i.e. assessee or Revenue or by the Registry of the Hon'ble High Court. An application dated 04.09.2023 was filed by the assessee without annexing the Certified Copy of the Hon'ble High Court's decision. The Tribunal took cognizance on such application and directed the parties to file complete details and also sought

explanation of the official of the Registry, who failed to list the appeal immediately after the letter dated 4th September, 2023.

8. This appeal was listed for hearing on 7th February, 2024, ld. Counsel for the assessee sought an adjournment but we apprise him about the time bound directions given by the Hon'ble High Court for disposal of this appeal and only granted one day adjournment. In this way, this appeal has been heard on 8th February, 2024.

9. The only issue, which is required to be adjudicated by us, is whether expenditure of Rs.55,27,558/- incurred by the assessee on land leveling and fencing deserves to be allowed to it or not. The case of the assessee is that it is engaged in the purchase and sale of land and, therefore, it has incurred the above expenditure. During the course of assessment proceeding, ld. Assessing Officer has confronted the assessee as to show the genuineness of this expenditure. The total expenditure was of Rs.82,66,742/-. The ld. Assessing Officer found that the assessee has submitted the bills to the extent of Rs.25,39,184/- and he allowed the expenditure to that extent. The balance amount is only depicted in a ledger vide a journal entry. The assessee could not file any bill or voucher. It could not demonstrate on which item this expenditure was incurred. It is pertinent to observe that for claiming expenditure for the purpose of business, then, the assessee is required to demonstrate that such expenditure was incurred wholly and exclusively for the purpose of the business. In order to prove that aspect, the assessee should have filed confirmation from the

recipient of such expenditure. It should file the banking details vide which such payment is made through account payee cheque and if not made through account payee cheque, then, justify as to how these payments were made. There should be some demonstrative evidence of carrying out the activity on which the expenditure was incurred. The assessee could produce a report from a valuation authority depicting the nature of land when it was purchased by the assessee and when it was sold. This type of report could be collected from a Registered Valuer or under directions of the Id. Assessing Officer, but no such step was taken by the assessee at the time of assessment proceedings. Before us also, Id. Counsel for the assessee could not take us any other supporting evidence, which was filed before the revenue authorities. The assessee has filed Photostat copies of certain bills as placed vide Annexures B-1 to H-11. A perusal of the Hon'ble High Court's direction would reveal that Tribunal is not required to entertain the fresh material, which called for comments of the Id. Assessing Officer and the Id. Assessing Officer would only comment if he has cross verified the alleged bills. There is no application under Rule 29 of Income Tax Appellate Tribunal Rules for permission to place on record additional evidence. As per the direction of the Hon'ble High Court, this Tribunal is required to re-appreciate the material already available on the record, which might have not brought to its notice in the first round of litigation, but we record a categorical finding that there is no such material which assessee has filed in the original round of litigation except copy of a ledger showing these expenditures. Such ledger is available on page no.

24. The ld. Assessing Officer was not satisfied with this ledger which can prove that the expenses were incurred wholly and exclusively for the purpose of business. Therefore, we find that ld. CIT(Appeals) has erred in deleting the additions. We allow the grounds of appeal raised by the Revenue and set aside the finding of ld. CIT(Appeals) on this issue. Addition to the extent of Rs.55,27,558/- is restored.

10. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open Court on 19/02/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 19th day of February, 2024

*Copies to :(1) Deputy Commissioner of Income Tax,
Circle-12, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, 7th Floor,
Kolkata-700069*

*(2) M/s. JKM Investment Pvt. Limited,
36, Bibhuti Bandopadhyay Sarani,
Kolkata-700019*

*(3) Commissioner of Income Tax (Appeals)-XII,
Kolkata;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.