

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3453/Del/2019
(Assessment Year: 2014-15)
M/s. Prime Maxi Vs. ACIT,
Promotion Pvt. Ltd, Circle-20(1),
115, Ansal Bhawan, 16, New Delhi
KG Marg, New Delhi
(Appellant) (Respondent)
PAN: AAACP6716D

Assessee by : Shri R. S. Singhvi, CA
Shri Satayjit Goel, CA
Revenue by: Ms. Harpreet Kaur, Sr. DR
Date of Hearing 22/11/2023
Date of pronouncement 20/02/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3453/Del/2019 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 188/2016-17 dated 27.02.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 02.12.2016 by the Assessing Officer, ACIT, Central Circle-08, New Delhi (hereinafter referred to as 'Id. AO').
2. The assessee has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals)-24, New Delhi [the CIT(A)] in upholding disallowance of business has erred in not admitting the additional evidence allegedly for the reason that during the course of assessment proceedings sufficient opportunities were provided to the Appellant.

1.1 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that query leading to disallowance of business loss of Rs.28,42,955/- was first raised in November, 2011 and on going through Appellant's reply, further details were sought on 25.11.2016 and assessment was

made on 2.12.2016 ie. within a week of seeking details. Therefore, prerequisite of Rule 46A of IT Rules, 1962 were met.

1.2 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that in response to details sought on 25.11.2016, the Appellant explaining its case sought time to file development agreement vide letter dated 30.11.2016 and amongst other this agreement was filed as additional evidence. Hence, sufficient and adequate opportunity was not afforded to the Appellant.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding disallowance of business loss to the extent of Rs.27,35,415/-.

2.1 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that cost of Rs.25,00,000/- (19,00,000 + 6,00,000) was contemporaneous to the consideration set out in documents for stamp duty purposes, as is evident from the submissions made during appellate proceedings.

2.2 That on the facts and circumstances of the case and in law, the CIT(A) in partially disallowing business loss has erred in taking registration expenses at Rs.1,17,540/- as against expenditure of Rs.1,44,511/- (1,27,560 + 16951) on N.P. registration and other expenses. Accordingly, cost was reduced by Rs.26,971/-.

2.3 That on the facts and circumstances of the case and in law, the CIT(A) N.P. ignoring the additional evidence did not adjudicate on expenditure of Rs.208,444/- on security and other maintenance expenses."

3. Ground Nos. 1, 1.1, 1.2, 2, 2.2 and 2.3 raised by the assessee were stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly dismissed as not pressed.

4. Ground No. 2.1 alone is the surviving ground and the same is now taken up for adjudication.

5. We have heard the rival submissions and perused the material available on record. The assessee company is engaged in the business of real estate development and mall management. During the year under consideration, the assessee company has shown income mainly from business and profession and capital gains on sale of shares.

6. The background facts as submitted by the assessee before the Id CIT(A) with regard to impugned issue are as under:-

In the course of real estate business, it entered into an agreement (Development Agreement) with three other companies (Associate Companies) namely Pragati

Techno Build (P) Limited, Yamnotri Properties (P) Limited and Vishnu Real Estate (P) Limited. The genesis of development agreement is that under Land Ceiling Act, the Developer Company i.e. Prime Maxi Promotion Services (P) Limited cannot buy lands beyond a land in its name. Therefore, in terms of development agreement, the associate companies purchased land in their name with the interest free funds provided by Developer Company and handed over the land to Developer Company for its development and sale etc. As stipulated vide clause 10 of Development Agreement, the associate companies are entitled to get a maximum of Rs.30,000/- per acre of land purchased by them in their name and pooled with the land of developer company for development by them as defined in the agreement. As stipulated in clause 7 of the development agreement which specifically provides that in case any part of the land is acquired by the Government for whatever reasons then any deficit/ surplus arising to the account of associate company in respect of compensation or any amount as a result of settlement thereto received shall be passed on to the Developer Company immediately. Prime Maxi Promotion Services (P) Limited has provided funds to Vishnu Real Estate (P) Limited to acquire land at Kishangarh (Rajasthan) as per development agreement dated 28.01.2008. Vishnu Real Estates (P) Limited acquired 10.70 acres land at a cost of Rs.51,77,444/- during financial year 2008-09 from various parties. Developer Company however despite making after best efforts could not acquire contiguous land, as such it was not feasible to develop a township which was originally planned by it. Therefore, the management during financial year 2013-14 decided to get rid off this project and decided to sell the acquired land in the given circumstances. Accordingly, 6.5 acres land purchased by Vishnu Real Estates (P) Limited was sold for a consideration of Rs. 16,36,500/- as against all inclusive cost of acquisition of Rs.45,47,955/-. The Assessing Officer without properly going through the details, particulars and evidence adduced before him and ignoring actual cost of land of Rs.45,47,955/- taken the cost of land for Rs.17,05,000/- only, as such disallowed actual expenses of Rs.28,42,955/- incurred to acquire the land.

7. The Id AO ignored the additional compensation paid in the sum of Rs. 6 lakhs for Khasra No. 33/1 and Rs. 19 lakhs for Khasra No. 18/1 totaling to Rs. 25 lakhs as cost of acquisition while computing the capital gains. The assessee submitted that this consideration of additional compensation was paid at the time of purchase of land and receipts were given by the sellers in stamp papers indicating the complete particulars of the land sold by them separately to the assessee and pleaded that the receipts given for stamp paper should be construed as forming an integral part of the purchase of the land by the assessee. The genuineness of the payment of said additional compensation of Rs. 25 lakhs cannot be doubted as the payment for the same were made through regular banking channels by account payee cheques. It was submitted that the said additional compensation was paid for standing crops, trees, plants and katcha pakka construction etc., complete details of which are given in the receipts issued by the vendors. The Id AO observed that when the lands were purchased and when it was sold, there was no mention about this payment of additional compensation. Further, the Id AO observed that the assessee had not shown any revenue generation from sale of such crops, plants, trees, katcha pakka house etc. The assessee specifically submitted that no revenue was ever generated by the assessee towards small standing crops, trees, plants, katcha pakka house etc and that assessee company sold these lands on as is where is basis. The Id AO did not heed to the aforesaid contentions of the assessee and disallowed the claim of cost of additional compensation paid for the sum of Rs. 25 lakhs while computing the capital gains on sale of lands. This action of the Id AO was upheld by the Id CIT(A).

8. It is a fact on record that the payment of additional compensation of Rs. 25 lakhs was made to the vendors of land in the FY 2007-08 through regular banking channels by account payee cheques. This sum of additional compensation of Rs. 25 lakhs has been paid out of disclosed sources and the said transaction is duly reflected in the balance sheet of M/s. Vishnu Real Estate Pvt. Ltd (who had acted as agent of the assessee) as on 31.03.2008 and the total cost of purchase is shown as under:-

| | |
|-----------------|------------------------|
| Khasra No. 33/1 | Rs. 10,76,258/- |
| Khasra No. 18/1 | <u>Rs. 32,63,253/-</u> |
| | Rs. 43,39,511/- |

9. It is not in dispute that the assessee during the year under consideration had sold the subject mentioned lands (Khasra No. 33/1 and Khasra No. 18/1) for Rs. 16,36,500/-. The sale consideration reported by the assessee is not doubted by the revenue. The regular cost of acquisition as reflected in the originally purchase deed together with miscellaneous expenses thereon is not doubted by the revenue. The only dispute is with regard to additional compensation paid in the sum of Rs. 25 lakhs for deduction of cost of acquisition is denied by the revenue. Admittedly this figure of Rs. 25 lakhs is getting reflected in the balance sheet of Vishnu Real Estate Pvt Ltd (agent of assessee) way back from 2008 onwards and the same has been duly accepted by the revenue in the past. Infact the Id AR before us made a statement from the bar that assessment for AY 2008-09 was completed u/s 143(3) of the Act, wherein, this additional compensation of Rs. 25 lakhs paid was accepted to have been made from disclosed sources and no addition was made towards the same. It is a fact on record that assessee had brought this agricultural lands through its sister concern M/s. Vishnu Real Estate Pvt. Ltd who acted as agent. The development agreement of the assessee with the agent dated 28.01.2008 is enclosed in pages 24 to 30 of the Paper Book. It is not in dispute that a sum of Rs. 43,39,511/- is reflected in the balance sheet of M/s. Vishnu Real Estate Pvt. Ltd towards cost of acquisition. It was submitted that the assessee had to develop a township and permission for commercial conversion could not be materialized, the assessee sold the agricultural land as it is. Identical issue in dispute was subject matter of consideration by the coordinate bench of this Tribunal in the case of ITO Vs. Hamlog Builders Pvt. Ltd in ITA No. 925/Del/2014 for AY 2007-08 dated 27.12.2016. The question raised before this Tribunal as under:-

"1. On the facts and circumstances of the case & in law, the learned Commissioner of Income Tax (Appeals) had erred in deleting the addition of Rs. 1,97,08.375/- on account of additional payment made to farmers."

The entire order is reproduced here:-

"2. The brief facts of this case are that the Assessing Officer noted during the course of assessment proceedings that the assessee had purchased the agricultural land for an amount of Rs. 19,32,23,625/-. From the details in respect of these purchases, it was noticed that the assessee company made additional payment of Rs.1,97,08,375/- over and above the sale consideration mentioned in the sale deed by which the assessee has increased the value of the land. When asked for, the assessee explained that the additional payment has been made, stated as under:

"(i) Additional amount paid for procurement of land, particularly, there is only for the purpose of acquiring assets in the company.

(ii) The company has not debited any of the expenses during the year in the profit and loss account or adjusted against the income chargeable to tax therefore, the question of this allowance does not arise at all.

(iii) The additional payment was made by the Company in favour of the following:

M/s Triveni Infra Development Co. Pvt. Ltd. Rs. 1,30,69,375/- vide cheque No. 441320 dated 21.04.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, Rs. 6,38,800/- vide cheque No. 4421321 dated 21.04.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, being the additional payment compensation for standing crops and old house. It is stated that Assessee Company had purchase the Land area 11.8813 acre from M/s Triveni Infra Development Co. Pvt. Ltd. for Rs. 13,06,93,75/- Sell Deed dated 20.04.06 but there after some disputed arises between party and assessee company due to increase in rate in market of land house and tubewell on the land. For smooth running of the business to get property free from any encumbrances, Assessee Company had paid additional Payment of Rs. 1,37,08,175/- as compensation to land owners. This payment made wholly & exclusively for Business purpose and duly recorded in book of accounts.

(ii) Shri Prakash Rs. 30,00,000/- vide cheque No. 441301 dt. 16.05.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, and Rs. 30,00,000/- vide cheque No. 441306 dated 24.04.2006 being the additional payment for settlement due to increase in rate of land in the market, It is stated that initially assessee Company in the oct 2005, made a agreement to purchase of land form Mr Prakash S/o Badle 16 Kanal in consideration of Rs. 1,10,00,000/- and paid advance accordingly. A sale deed for the same land was executed on 13/04/2006, entire consideration was paid and sale deed executed. Within the same week company has agreed to purchase 16 kanal from same Prakash and his brother Sant Ram in consideration of Rs. 2,20,00,000/- and paid accordingly.

When the seller came to know the fantastic increase in cost of land which as double in 4 days, he and his relative denied to hand over the possession

of said land pertinent to the transaction under Rs. 1,10,00,000/- of sale deed dated 13.04.2006.

As there was raised in price value the company decided to pay the part of the price to the respective seller. As the price rise was calculated by the seller 1.10 crore to 2.20 crore then vide settlement the same of Rs. 60,00,000/- paid against lower amount."

2.1 The Assessing Officer took the view, after noticing that the assessee had not debited any expense in the profit and loss account that the additional payment has been made after registration of the sale deed. These additional payments, therefore, if the violation of the provisions of Section 24 of the Indian Stamp Act, 1899, and instrument on which proper stamp duty has not been paid, is inadmissible evidence as per section 35 of the Stamp Act and, therefore, he took the view that the additional payment do not stand the test of legality as per the provisions of Explanation to Section 37 of the Income-tax Act, 1961 (for short "the Act"). The only contention of the assessee is that the above land has been shown under the head 'Project under Progress/Inventory'. He took the view that the inventory or stock would always be mandatorily taken into account while arriving at the profit of any venture. He did not accept the explanation of the assessee that the payments were made on account of standing crops, tubewell etc. as the value of the agricultural produce comes to few thousand of rupees, whereas the additional payment has been made in lakhs and the companies to whom the payments have been made, has not been shown in the income from sale of standing crops/plants or trees or any other sort.

2.2 The assessee went in appeal before the learned Commissioner of Income Tax (Appeals). The learned Commissioner of Income Tax (Appeals) deleted the addition by holding as under:

"I have considered the assessment order, written submissions of the Ld. AR and additional evidence filed during the appellate proceeding and the report of the Ld. Assessing Officer on such additional evidence.

It is admitted fact that the entire additional payments has been made subsequent to registration of sale deed to the sellers of the land. The Ld. Assessing Officer has not doubted the payment of such additional payment. The reason for additional payment explained by the appellant and the Ld. AR is on account of crops tube well etc. on the land to the extent of Rs. 6,38,000/- & rest of the payment was paid on account of dispute created by the seller of the land at the time of taking possession as there was steep rise in land price. These payment for increase in cost is backed up by written agreement

In fact, main ground for the addition on account of such disallowance of additional payment by the Assessing Officer is that the payment has been made in violation of Indian Stamp Act, namely. Section 24 and 35 of Indian Stamp Act. The Assessing Officer has held that these payments are in violation of Indian Stamp Act and, therefore, the same is not allowable u/s 37 of the I.T. Act. The Ld. Assessing Officer has relied on explanation of section 37 which states that any expenditure incurred by assessee for any

purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction shall be made in respect of such expenditure.

I have examined section 24 and section 35 of Indian Stamp Act. Section 24 envisages scope of entire consideration with respect to transfer of immovable property. Section 35 envisages that the instrument which has registered cannot used as evidence unless such instrument is duly stamped. Neither the section either 24 nor 35 provides payment subsequent to registration illegal as such. As the additional payment is made subsequent to registration, they will not come, within the purview, of the consideration u/s 24 of Indian Stamp Act till the date of registration. As far as section 35 is concerned, if such registered deed without proper stamp duty cannot be taken as evidence before the law. Therefore in nutshell if subsequent payment, i.e. additional payment is considered as consideration for the property then such registered deed will not be taken as evidence to claim ownership right or the property.

Even if the additional payments are linked to the consideration for the transfer of rights in the property, it is the duty of registrar, registering the document to raise additional stamp on such additional consideration. In present case, no additional stamp duty has been collected on additional payment subsequent to the registration. No penalty for such additional payment has been levied by registration authority administering the stamp Act. In such circumstances, I don't agree that these additional payments are prohibited by law and, therefore, such payment cannot be claimed as deduction u/s 37 of I.T. Act. The additional payment is made in business expediencies.

During the assessment proceeding, the appellant have given the complete details of additional payment, the purposes and the name and address of the payee. The Ld. Assessing Officer has not made any enquiry to rebut the claim of the appellant. The purpose of additional payment to various person is stated to be the payment for standing crops, tubewells etc. on the agricultural land and payment for as per compromised deed to strengthen the title of the land. The payments are through banking channel and which has not been doubted by the Ld. Assessing Officer.

The Ld. Assessing Officer has mentioned in the order there is notice u/s 133(6) of the I.T. Act were issued in five companies to enquire the trend of additional payment. It is mentioned in the order that those five companies have stated that no additional payment was made for the acquisition of land in such area. During appellate proceeding, Ld, AR has submitted the Balance Sheet and P & L A/c of those companies from the sites of Ministry of Corporate Affairs. Government of India for A.Y. 2007-08: There is investment of not more than 1.5 lacs. These information were forwarded to Ld. Assessing Officer for comment, the Assessing Officer vide letter dated 27-8-2013 has verified the record and stated that no reply from these five companies in response to alleged 133(6) are on record & Infact notice u/s 133(6) is not on record.

In any case, it is established that the appellant was not confronted during the assessment proceeding, regarding the verification u/s 133(6) and presently the assessment record does not contain any paper related to 133(6). Therefore, no cognizance can be taken on the basis of the findings of the Ld. Assessing Officer in the Assessment order regarding verification u/s 133(6) of the I.T. Act. against the assessee. Further, the Additional payment for the purchase of land is the matter of facts and depends "on circumstances of particular land purchase deal.

After considering entire facts and circumstances of the case, I hereby direct the assessing officer to delete the addition on account of additional payment. This ground of appeal is allowed."

2.3 Aggrieved from the order of Commissioner of Income Tax (Appeals), the Revenue is before us.

3. We heard the rival submissions and carefully considered the same along with the orders of the tax authorities below. We note that this is a case where the assessee has not debited the expenditure, which has been incurred by the assessee by way of additional payment made for the purchase of the land. Neither the assessee has claimed these expenditures as deduction in the profit and loss account, nor the assessee claimed these expenditures to be made as compensation for standing crop, rise in the market rate of land, old house and tubewell on the land as per the Tripartite Agreement dated 21.07.2006. The payment has been made by the assessee through cheques as is clear from the brief facts stated hereinabove. The Assessing Officer made the addition in view of the explanation to section 27 of the Act. The provision of Explanation to Section 37 of the Act, read as under:"

"For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure.

4. From the aforesaid Explanation, it is apparent that this Explanation debars the assessee to claim deduction in respect of any expenditure. which has been incurred by the assessee for any purposes which is an offence or which is prohibited by law. Compensating the land owner for standing crops, rise in market rate of land, old house and tubewell on the land, in our view, cannot be recorded that the expenditure has been incurred for the purpose, which is an offence or which is prohibited by law. Making payment in this manner is not an offence. Learned Departmental Representative, even relying on the order of the Assessing Officer, could not brought to our knowledge any prevailing law by which the assessee is prohibited to make such payment to the land owner or such payment are deemed to be an offence. Under these facts and circumstances, we are of the view that this is not a fit case, which warrant our interference. In our opinion, the learned Commissioner of Income Tax (Appeals) has rightly deleted the disallowance."

10. In the instant case, the genuineness of the payment of additional compensation of Rs. 25 lakhs to the vendors had not been doubted by the revenue and the same is duly supported by the receipts given in stamp paper by vendors. These receipts are enclosed at pages 46 to 47 of the paper book. In the said receipts the Khasra No. 33/1 and Khasra No. 18/1 is also mentioned which is the land that had been ultimately sold. The said receipts are issued by the very same vendors to whom the assessee had sold the lands. All these facts collectively go to prove that the sum of Rs. 25 lakhs paid as additional compensation by the assessee to the vendors would actually form part of the cost of acquisition of the lands and consequentially eligible for deduction while computing capital gains.

11. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we direct the Id AO to grant deduction of Rs. 25 lakhs while computing capital gain on sale of lands. Accordingly, the ground No. 2.1 raised by the assessee is allowed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20/02/2024.

-Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 20/02/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi