

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपील सं./ ITA No.64/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Casa Grande Civil Engineering Private Limited 5 th floor, NPL Devi, LB Road, Thiruvanmiyur, Chennai-600 041.	बनाम/ Vs.	JCIT (OSD) Corporate Circle-1(1) Chennai-34.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFCC-5227-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकरअपील सं./ ITA No.189/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

JCIT (OSD) Corporate Circle-1(1) Chennai-34.	बनाम/ Vs.	M/s. Casa Grande Civil Engineering Private Limited, 5 th floor, NPL Devi, LB Road, Thiruvanmiyur, Chennai-600 041.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFCC-5227-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

3. Cross Objection No.49/Chny/2023
(In ITA No.189/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Casa Grande Civil Engineering Private Limited, 5 th floor, NPL Devi, LB Road, Thiruvanmiyur, Chennai-600 041.	बनाम/ Vs.	JCIT (OSD) Corporate Circle-1(1) Chennai-34.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFCC-5227-K		
(अपीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Shri G. Reddi Prakash (CA)- Ld. AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Shri P. Sajit Kumar(JCIT)-Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	20-02-2024
घोषणाकीतारीख / Date of Pronouncement	:	20-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by an order dated 24-11-2022 as passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 24-04-2021, the assessee as well as revenue is in further appeal before us. The assessee has also preferred cross-objection in revenue's appeal.

2. The Registry has noted delay of 4 days in revenue's appeal, the condonation of which has been sought by Ld. Sr. DR. Keeping in view the period of delay, we condone the delay and proceed for adjudication of the same. The grounds raised by the revenue read as under: -

1. Whether the Ld. CIT(A) erred in deleting the disallowance made on account of repairs and maintenance without appreciating the fact that the expenditure was actually incurred towards construction of model house which is a capital expense as the assessee will be enjoying enduring benefit from the same over the life of the construction project?

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance made on the advertisement and sales promotion expenses incurred by the holding company but claimed by the assessee as incurred towards its business without verifying the evidence as to whether the assessee company benefitted from the above expenses for its own business or not?

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) ought to have called for a remand report from the AO in order to verify the genuineness of such huge claims made by the assessee?"

As is evident, two issues fall for our consideration i.e., (i) Disallowance of repairs and maintenance expenses; (ii) Disallowance of advertisement and sales promotion expenses.

3. Having heard rival submissions, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in real estate business.

4. Disallowance of Repairs & Maintenance Expenses

4.1 During this year, the expenditure claimed by the assessee under this head increased by 184%. Though the assessee filed certain details in support of the expenditure, Ld. AO rejected the same and disallowed 50% of enhanced expenditure claimed in this year on the ground that it was capital expenditure. The same resulted into disallowance of Rs.25.89 Lacs in the hands of the assessee.

4.2 During appellate proceedings, it transpired that the assessee claimed major repair expenses of Rs.55.40 Lacs on building a Model House for its new project Bellisimo. The same was claimed as repairs and maintenance expenditure.

4.3 The Ld. CIT(A) observed that AO did not point out any un-vouched expenses and no disallowance could be made merely because there was an increase in expenses and there was fall in net profit rate. The adhoc disallowance of expenditure was not justified and accordingly, the same was deleted. Aggrieved, the revenue is in further appeal before us.

4.4 We find that the impugned disallowance has been made merely on the basis of percentage increase in expenditure during this year in comparison to previous year. The said methodology assumes that the expenditure incurred by the assessee would directly vary with the sales turnover which is clearly a fallacious one. Merely by comparing two financial results, impugned disallowance could not be made unless it is shown that the expenditure was not genuine. The expenditure incurred

on building a Model House is part and parcel of business activities of the assessee and the same is clearly revenue in nature. Therefore, the impugned disallowance has rightly been deleted by Ld. CIT(A). The corresponding ground stand dismissed.

5. Disallowance of Advertisement and Sales Promotion Expenses

5.1 The expenses claimed on account of Advertisement increased by 164% during this year. Similarly, the expenditure claimed on sales promotion increased by 306% in this year. As against this, the turnover of the assessee increased only by 22%. Therefore, rejecting assessee's submissions, Ld. AO applied the same ratio and allowed only 22% increase in expenditure and disallowed the remaining expenditure. The same resulted into disallowance of Rs.793.79 Lacs.

5.2 During appellate proceedings, the assessee submitted that it was carrying two projects in this year viz. Bellisimo & Aristo and incurred sales promotion expenses for both the projects whereas in earlier year, it incurred sales promotion expenses for Project Aristo only. Further, the assessee's holding company Ms Casa Grand Builder incurred cost for all of its subsidiary companies projects. The total cost incurred was Rs.43.33 Crores which was apportioned and allocated to all the companies based on total construction cost incurred for each company. Such allocation, in assessee's case, was for Rs.10.31 Crores. The assessee submitted that due TDS was deducted against the same.

5.3 The Ld. CIT(A) observed that AO did not point out any un-vouched expenses and no disallowance could be made merely because there was an increase in expenses and there was fall in net profit rate. The

ad hoc disallowance of expenditure was not justified and accordingly, the same was deleted. Aggrieved, the revenue is in further appeal before us.

5.4 Our adjudication as contained in para 4.4 would equally apply to this issue also. The impugned disallowance has been made merely on the basis of percentage increase in expenditure during this year in comparison to previous year. The said methodology assumes that the expenditure incurred by the assessee would directly vary with the sales turnover which is clearly a fallacious one. Merely by comparing two financial results, impugned disallowance could not be made unless it is shown that the expenditure was not genuine. Therefore, the impugned disallowance has rightly been deleted by Ld. CIT(A). The corresponding ground stand dismissed.

5.5 The appeal of the revenue stand dismissed.

Assessee's Appeal

6. The grounds raised by the assessee read as under: -

1. The order passed by the Learned CIT (A), is opposed to law and contrary to the facts and circumstances of the case and is therefore unsustainable.
2. The Learned CIT (A) erred in upholding the order of the Learned Assessing Officer, without fully appreciating the facts of the case, supporting evidences and submissions made by the appellant during the course of assessment and first appellate proceedings.
3. The learned assessing officer erred in disallowing interest paid to Sundaram Finance u/s 40(a)(ia) of the Act without considering the facts of the case and appellants submission.
4. The learned assessing officer and the CIT(A) erred in treating the amount received from the customers as unexplained cash credit disregarding the submission of the appellant.
5. The assessing officer erred in disregarding the submissions of the appellant with regard to the adjustments proposed in the intimation u/s 143(1) of the Act and carrying out those adjustments in the assessment order mechanically without appreciating the factual position. The CIT(A) also made a mistake of upholding it without considering the factual position.
6. The assessing officer and the CIT(A) erred in not appreciating the fact that the appellant is following the exclusive method of accounting and has not routed the indirect taxes through the profit and loss account.

7. The assessing officer and the CIT(A) failed to appreciate that since the appellant has not debited the indirect taxes to the profit and loss account, disallowing the expenses does not arise .

8. The assessing officer and the CIT(A) failed to appreciate that the PF and ESI are paid before the due date of filing the return of income and are allowable under section 43B of the Act. Both the Assessing officer and the CIT(A) erred in ignoring the judicial pronouncements including the Honorable Jurisdictional High Court decision in this regard.

Ground Nos. 1 & 2 is general in nature. Ground No.8 has not been pressed by Ld. AR during hearing before us. In the remaining ground, three issues fall for our consideration i.e., (i) Disallowance u/s 40(a)(ia) for want of TDS on interest payment; (ii) Addition of unexplained cash credit; (iii) Disallowance of default in deposit of Service Tax Payments.

7. Disallowance u/s 40(a)(ia) for want of TDS on interest payment

7.1 It transpired that the assessee made interest payment to M/s. Sundaram Finance without deduction of Tax at Source (TDS). Accordingly, Ld. AO computed impugned disallowance u/s 40(a)(ia) @ 30% which resulted into impugned disallowance of Rs.10.54 Lacs. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

7.2 The Ld. AR sought benefit of second proviso to Sec. 40(a)(ia) and placed on record additional evidence which is in the form of Form 26A. The same would have material bearing on the claim of the assessee. Therefore, we admit the same and direct Ld. AO to verify the same. If the same is found to be correct, impugned disallowance would stand deleted. The ground raised by the assessee stand allowed for statistical purposes.

8. Addition of unexplained cash credit

8.1 In the Tax Audit Report, it was mentioned that receipts for Rs.127.42 Lacs could not be identified to a particular customer. Since

the assessee could not reconcile the same during assessment proceedings, Ld. AO added the same as unexplained cash credit u/s 68 of the Act. The Ld. CIT(A) refused to admit additional evidences as filed by the assessee during appellate proceedings since the same were not filed as per Rule 46A of Income Tax Rules. Aggrieved, the assessee is in further appeal before us.

8.2 The Ld. AR has submitted that the assessee is in a position to reconcile all the entries and provide requisite details. We observe that the additional evidences were filed by the assessee during first appellate proceedings also. However, the same were not admitted. Keeping in mind the principle of nature justice, we direct Ld. AO to consider these additional evidences and re-adjudicate the impugned issue. The assessee is directed to substantiate the same. The ground raised by the assessee stand allowed for statistical purposes.

9. Disallowance of default in deposit of Service Tax Payments

9.1 This disallowance was made by CPC while processing the return of income u/s 143(1). It transpired that Service Tax liability amounting to Rs.321.88 Lacs remained outstanding and accordingly, the same was disallowed u/s 43B. The assessee submitted that it was following exclusive method of accounting and the service tax was not routed through Profit & Loss Account. However, Ld. CIT(A) rejected the same considering the provisions of Sec.145A(ii) which mandate the assessee to follow inclusive method of accounting. Aggrieved, the assessee is in further appeal before us.

9.2 The Ld. AR submitted that the payment was under dispute and the same has ultimately been settled under Sabka Vishwas (Legacy Dispute

Resolution Scheme, 2019). The documentary evidences, in this regard, have also been placed on record. The Ld. AR also submitted that this amount has not been claimed by the assessee in the year of payment.

9.3 We concur with the adjudication of Ld. CIT(A) that the provisions of Sec.145A(ii) mandate the assessee to follow inclusive method of accounting. The disallowance u/s 43B would be attracted even if the assessee follows exclusive method of accounting. Since this issue has not be considered by Ld. AO and considering the submissions made by Ld. AR that the payment of Service Tax was under dispute, we restore this issue back to the file of Ld. AO for fresh adjudication. The ground raised by the assessee stand partly allowed for statistical purposes.

9.4 The appeal of the assessee stand partly allowed for statistical purposes.

9.5 Since we have dismissed revenue's appeal, the cross-objection filed by assessee has been rendered infructuous.

Conclusion

10. The revenue's appeal stand dismissed. The assessee's cross-objection has been rendered infructuous and hence, dismissed. The assessee's appeal stand partly allowed for statistical purposes.

Order pronounced on 20th February, 2024

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 20-02-2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्था/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF