

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

**Before Shri Sanjay Garg, Judicial Member
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 661 & 662/KOL/2023
Assessment Year: 2012-2013 & 2013-2014**

***Aranyak Developers Private Limited,.....Appellant
B-80, Sector-2A,
Bipin Chandra Pal Sarani,
Bidhan Nagar, Durgapur, Burdwan-713212,
West Bengal
[PAN:AAJCA5219K]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-1, Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713216, West Bengal***

Appearances by:

*Shri Manoj Kataruka, Advocate, appeared on behalf of the
assessee*

*Shri Ankur Goyal, JCIT, Sr. DR, appeared on behalf of
the Revenue*

Date of concluding the hearing: January 10, 2024

Date of pronouncing the order: March 19th, 2024

O R D E R

Per Sanjay Garg, Judicial Member:-

The present appeals have been preferred by the assessee against the orders of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre

(NFAC), Delhi both dated 2nd May, 2023 for assessment years 2012-13 & 2013-14. Since facts and issues involved in both the appeals are identical, these have been heard together and are being disposed of by this common order.

2. First we take up the appeal in ITA No. 661/KOL/2023 for A.Y. 2012-13. The assessee in this case has taken the following grounds of appeal:-

(1) For that on the facts of the case the AO was not legally justified in disallowing the claim of Rs. 17,85,736/- being the amount paid by the appellant (developer) to the land owner as initial payment of land compensation, and the same may please be allowed.

(2) For that on the facts of the case the AO was not legally justified in disallowing an amount of Rs. 2,70,744/- u/s 40(a)(ia) of the Act 61. for non deduction of TDS . when the said payments made to parties are covered by second proviso to section 40(a)(i) read with first proviso to section 201(1) of the Act 61, and the addition may please be deleted.

(3) For that on the facts of the case the AO was not legally justified in adding back an amount of Rs.3,00,000/- u/s 40A(3) of the Act 61, when the payments are covered by exceptions to Rule 6DD of the Rules 62, and the same may please be deleted.

(4) For that on the facts of the case, the initiation of proceedings u/s 147 of the Act, 1961, is legally not valid, in absence of proper recorded reasons, and approval granted without any application of mind, t4he proceedings are void ab initio.

3. Vide Ground No. 1, the assessee has agitated against the action of the lower authorities in disallowing the sum of Rs.17,85,736/- claimed by the assessee as revenue expenditure, whereas held by the ld. Assessing Officer as capital expenditure.

4. Brief facts relevant to the issue are that the assessee is a promoter and developer of Real Estate. The assessee entered into a Joint Development Agreement with land owners for development of a plot of land by way of construction of residential flats and sale thereof. As per the Joint Development Agreement, it was agreed upon by both the parties to the agreement that there will be percentage sharing of revenue proceeds in between them. However, the land owners later on did not want to share the profits, rather settled at a fixed amount of Rs.9 crores in instalments spread over a period of few years in the course of construction process. The first instalment of Rs.17,85,736/- has been paid by the assessee to the land owners during the financial year 2011-12 relevant to the assessment year under consideration as land compensation. The assessee claimed the said amount as revenue expenditure. However, the ld. Assessing Officer disallowed the same observing that the original JDA was registered agreement, whereas the subsequent agreement was not registered with the Registrar, rather the same was notarized and further that the said supplementary agreement was not found at the premises of the assessee during the survey action. He, therefore, disallowed the said amount and added back the same to the total income of the assessee.

5. The ld. CIT(Appeals) confirmed the order of the ld. Assessing Officer on this issue.

6. We have heard the rival contentions and gone through the record carefully. It is not disputed that the aforesaid amount was paid by the assessee to the land owners. It is also not disputed that the land/flats thereof are stock-in-trade of the assessee. It is also not disputed that the amount paid by the assessee to the land owners will add to the cost of Project. Therefore, the said amount is allowable as expenditure. The assessee follows Project Completion Method and the said amount has been added to inventories. The payment has been made by the assessee of this amount to the land owners by cheque. There is no bar in making Supplementary Deed amending certain Clauses of the Registered Agreement and the said Supplementary Agreement is legally enforceable document, even the same is not registered. Moreover, there is no dispute that the said amount has been paid by the assessee to the land owners of the land upon which the development project is carried on. In view of this, there is no justification on the part of the ld. Assessing Officer in disallowing the impugned expenditure. The order of the lower authorities in making/confirming the impugned addition is therefore, set aside. This ground of appeal of assessee is allowed.

7. In Ground No. 2, the assessee has agitated against the confirmation of disallowance of Rs.2,70,744/- under section 40(a)(ia) of the Income Tax Act for non-deduction of TDS.

8. The ld. Counsel for the assessee has brought our attention to page no. 53 of the paper book to submit that the amount of

Rs.40,000/- was paid by the assessee on account of accounting charges and audit charges out of which, the amount of Rs.15,000/- was paid as accounting charges upon which no TDS was required to be deducted and further, an amount of Rs.25,000/- was paid to the auditor, which was below the threshold limit and hence, no TDS was required to be deducted on the said amount also. The ld. Counsel has further placed reliance on page 56 of the paper book to submit that Rs.94,640/- was paid as Printing & Stationary charges upon which no TDS was required to be deducted. The ld. Counsel has fairly agreed that the balance of Rs.1,36,104/- was spent on advertisement expenses. However, since TDS was not deducted on the said amount, the addition relating to the said amount be confirmed. Accordingly, this ground of appeal is partly allowed and the addition on account of non-deduction of TDS is restricted to Rs.1,36,104/-.

9. The ld. Counsel for the assessee has not pressed Grounds No. 3 & 4 of this appeal at the time of hearing. Therefore, the same are being dismissed as not pressed.

10. In view of this, the appeal of the assessee bearing ITA No. 661/KOL/2023 is treated as partly allowed.

11. Now we take **ITA No. 662/KOL/2023** for A.Y. 2013-14.

In this appeal, though the assessee has taken as many as five grounds of appeal, but the ld. A.R. has pressed ground No. 1 only,

which is relating to the land development compensation paid to the owners.

12. The facts and issue involved in this appeal is identical to the issue as discussed by us above while adjudicating Ground No. 1 of the assessee's appeal for A.Y. 2012-13 bearing ITA No. 661/KOL/2023. Our finding given above on this issue will *mutatis mutandis* apply in this year also. Ground No. 1 of the appeal is accordingly allowed.

13. Grounds No. 2 to 5 are dismissed as not pressed.

14. In the result, the appeal of the assessee is also treated as partly allowed.

15. To sum up, in the result, both the appeals of the assessee stand partly allowed.

Order pronounced in the open Court on 19/03/2024.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sanjay Garg)
Judicial Member

Kolkata, the 19th day of March, 2024

*Copies to :(1) Aranyak Developers Private Limited,
B-80, Sector-2A,
Bipin Chandra Pal Sarani,
Bidhan Nagar, Durgapur, Burdwan-713212,
West Bengal*

(2) *Assistant Commissioner of Income Tax,
Circle-1, Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713216, West Bengal*

(3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) *CIT- , Kolkata*

(5) *The Departmental Representative;*

(6) *Guard File*

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By order

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

Laha/Sr. P.S.