

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL,
AMANDHON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं./ ITA No.266 /Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s Swarnamukhi Developers P. Ltd. No.1, Subbaraya Avenue, C.P.Ramaswamy Road, Alwarpet, Chennai-600 018.	बनाम/ Vs.	ITO Corporate Ward-6(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AALCS-8985-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri D. Anand (Advocate) - Ld.AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri AR V Sreenivasan(Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	27-05-2024
घोषणा की तारीख / Date of Pronouncement	:	03-07-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 29-10-2018 in the matter of an assessment framed by learned Assessing Officer u/s 143(3) of the Act on 30-12-2016. The assessee is aggrieved by confirmation of disallowance of cost of purchase of land and disallowance of filling cost as made by Ld. AO in the assessment order. Having heard rival

submissions, our adjudication would be as under. The assessee being a corporate entity is stated to be engaged in development of real estates.

Proceedings before lower authorities

2.1 During assessment proceedings, it transpired that the assessee sold land to the extent of 22.32 Acres for aggregate sale consideration of Rs.663.75 Lacs which is tabulated at page-2 of the assessment order. The assessee claimed cost of land and related expenses for Rs.1146.62 Lacs. It was explained that one entity M/s Rakindo Developers Pvt. Ltd. (Rakindo) advanced a sum of Rs.171 Crores to one Shri S.P. Velayutham (SPV) as land aggregator during 2007-08 for acquiring land parcels in Tamil Nadu for township development in compliance with FDI norms. However, SPV failed to deliver the promise and tried to cheat Rakindo. After court interference, Rakindo recovered various properties in lieu of such advances based on market value negotiated and as agreed by both the parties which was filed before Hon'ble High Court of Madras. Since Rakindo was having FDI investment, there were restrictions on the way in which this company could conduct business. FDI companies were not allowed to buy and sell vacant lands nor allowed to do individual construction projects below a certain limit. Therefore, each property so recovered through court was registered in the name of separate Special Purpose Vehicle (SPV) entity with minimum share capital of Rs.1 Lacs held by Indian entity and value of property was held against advances given by Rakindo. The assessee was stated to be one such SPV.

2.2 The assessee further explained that actual consideration agreed between the parties for 50.13 acres of land was Rs.25 Crores. The consideration was based on market value of property. The value was

disclosed in the Memorandum of Compromise dated 31-08-2010 which was filed before Hon'ble High Court of Madras (Crl. O.P.No.8711 of 2010) dated 16-09-2010. Since the guideline value was lower than the market value, the properties were registered at guideline value. In such a scenario, the land cost has to be booked at the actual value of consideration paid and not on the guideline value. It was also evident that the total sale value realized by the company on sale of such land was in line with the purchase value. Shri SPV confirmed that he received consideration of Rs.25 Crores against this land. However, rejecting the same, Ld. AO held that value of land as fixed by Rakindo had no legal significance. The assessee company had no legal obligation to inflate the cost of purchases as booked in the books of Rakindo. Finally, the cost was taken as specified in the purchase deeds and Ld. AO computed profit on sale for Rs.673.37 Lacs. The assessee claimed sum of Rs.70.97 Lacs as land filling cost. Since the assessee could not substantiate the same with acceptable evidences, the same was denied to the assessee.

2.3 The Ld. CIT(A) held that the value agreed between the parties in dispute could not be treated as cost of acquisition. The disallowance of filling cost was also confirmed since the assessee could not substantiate the same. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

3. The factual matrix as stated in preceding paragraphs is not in dispute. It emerges that Rakindo advanced sum of Rs.171 Crores to SPV to acquire certain land parcels. SPV failed to deliver the promise and tried to cheat Rakindo. After court interference, Rakindo recovered various properties in lieu of such advances based on market value

negotiated and agreed by both the parties which was filed with Hon'ble High Court of Madras. Since Rakindo was having FDI investment, there were restrictions on the way in which this company could conduct business. FDI companies were not allowed to buy and sell vacant lands nor allowed to do individual construction projects below a certain limit. Therefore, each property so recovered through court was registered in the name of separate Special Purpose Vehicle (SPV) entity with minimum share capital of Rs.1 Lacs held by Indian entity and value of property was held against advances given by Rakindo. The assessee was stated to be one such SPV.

4. It could be seen that the properties have been acquired by the assessee against advances given by Rakindo to SPV. The market value of the properties has been ascertained in Memorandum of Compromise dated 31-08-2010 between SPV and Rakindo. This property has been agreed to be taken over at Rs.25 Crores. In other words, by acquiring this property, Rakindo has given up its right to that extent and discharged SPV to that extent. Out of 50.13 acres, the assessee has sold land to the extent of Rs.22.32 acres at agreed consideration of Rs.663.75 Lacs and computed gains by considering the cost of Rs.25 Crores. The Ld. AO, on the other hand, has adopted guideline value while computing the gains. In our opinion, Ld. AO is not correct in doing so since no actual consideration has flown between Rakindo and SPV. The properties have been registered as per Memorandum of compromise wherein the property has been taken over by Rakindo at agree price of Rs.25 Crores. Therefore, we concur with the claim of the assessee that the cost has to be taken as per Memorandum of Compromise while disregarding the guideline value. We order so. The

filling cost has rightly been disallowed since the assessee has miserably failed to substantiate the same.

5. The appeal stand partly allowed.

Order pronounced on 3rd July, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :03-07-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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