

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.2098/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT Corporate Circle-5(1), Chennai.	बनाम/ Vs.	M/s. Rakindo Developers P. Ltd Trimex Towers, No.1, Subbaraya Avenue, C.P. Ramaswamy Road, Alwarpet, Chennai-600 018.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AADCR-8015-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri D.Anand (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Revenue by	:	Shri Nilay Baran Som (CIT) – Ld. 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 revenue for Assessment Year (AY) 2014-15 arises out of an order passed by learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] on 28-04-2017 in the matter of an assessment framed by learned Assessing Officer u/s 143(3) of the Act on 30-12-2016. The revenue is aggrieved by deletion of disallowance of Rs.1185.91 Lacs & Rs.533.88 Lacs 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 carried on the business of builder.

2. Brokerage & Commission of Rs.1185.91 Lacs

2.1 This has three components i.e. an amount of Rs.60.91 Lacs as provisions for expenses. The same represent write-off against an entity IPN Management Consultancy Services (IPN) and include TDS amount of Rs.56.65 Lacs as remitted by the assessee while making certain payment to one Shri SP Velayutham (SPV). The Ld. AO disallowed the same on the ground that it was mere provision in nature.

2.2 The amount of Rs.550 Lacs was stated to be paid to one Shri B. Jayaraman whereas another amount of Rs.575 Lacs was stated to be paid to M/s JAK promoters Private Ltd. (JPPL). It transpired that the assessee advanced sum of Rs.171 Crores to SPV as land aggregator for the assessee 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 the company. After court interference, the assessee recovered various properties in lieu of such advances based on market value negotiated and agreed by both the parties which was filed before Hon'ble High Court of Madras. Since the company was having FDI investment, there were restrictions on the way in which the 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 company with minimum share capital of Rs.1 Lacs held by Indian entity and value of property was held against advances given by the assessee.

2.3 The Ld. AO held that since the land was registered in the name of subsidiaries and it was sold by the subsidiaries companies, the relevant expenses of recovery cost should also be borne by the subsidiaries. These amounts were shown as advances in the Balance Sheet of the assessee which was utilized by subsidiary companies. Accordingly, the amount was not incurred for the purpose of assessee business and therefore, disallowed.

2.4 During appellate proceedings, the assessee submitted that subsidiary entities had no role in advances and recovery thereof from land aggregator. Without impugned commission payments, there was no likelihood of recovery of advances given by the assessee and therefore, the claim was allowable u/s 37(1).

2.5 The Ld. CIT(A) noted that the amount of Rs.60.91 Lacs was claimed in respect of IPN Management Consulting Service (IPN). The assessee paid an amount of Rs.5 Crores to IPN for services rendered by them for engaging SPV, the land aggregator. The amount was paid after deduction of tax at source for Rs.56.65 Lacs. Since, SPV did not render the services, the assessee demanded refund from IPN who returned only the net amount but refused to refund the TDS amount deposited by the assessee. Accordingly, the amount of Rs.60.91 Lacs as due from IPN was claimed as deduction.

2.6 The assessee further submitted that it was only because of intervention by Shri B.Jayaraman and M/s JPPL, the compromise could be arrived at by the assessee and advances could be recovered by the assessee through special purpose subsidiaries. It could not be said that the expense were not incurred for the purpose of business. The assessee duly explained the circumstances under which the properties

were registered in the name of special purpose entities due to restrictive legislation. The genuineness of the payment was not in doubt. It was natural that the assessee had done all the transactions through these entities. It could reasonably be inferred that the expenditure was incurred for the purpose of business. Concurring with assessee's submissions, impugned disallowance was deleted against which the revenue is in further appeal before us.

2.7 After going through the findings of Ld. CIT(A), we find the Ld. CIT(A) has clinched the issue in proper perspective. After going through factual matrix, we are of the considered opinion that the impugned payments were incurred for the purpose of assessee's business and with a view to facilitate the recovery of advances given by the assessee to the land aggregator. Under such circumstances, the write-off so claimed by the assessee is nothing but a business loss. The same has rightly been allowed by Ld. CIT(A). The corresponding grounds stand dismissed.

3. Advances Written-off for Rs.533.88 Lacs

3.1 The assessee claimed write-off of advance as given to M/s Swarnamukhi Developers Pvt. Ltd. (SDPL). This was stated to be one such special purpose entity where certain land situated at Madurai was acquired at an agreed value of Rs.25 Crores. The property was registered at guideline value. Since amount for purchase of land as well as registration expense were incurred by the assessee, the land was debited as inventory and credit was given by SDPL to the assessee as amount payable. This land was sold as distressed sale due to adverse market conditions. The loss incurred on such sale was passed on to the assessee and accordingly, written-off in the books of the assessee. This amount was shown as income in the hands of SDPL as liability no longer

payable to the assessee. However, Ld. AO denied the same on the ground that the loss was not incurred by the assessee in the course of business. Secondly, such loss was claimed by SDPL in its return of income. Therefore, the claim was disallowed.

3.2 During appellate proceedings, it was explained by the assessee that the value of the property and registration expense was shown in the books of SDPL as amount due to the assessee whereas in the books of the assessee, the corresponding amount was shown as advance to SDPL. The loss on sale of property was transferred to the assessee which was ultimately written-off in the books of the assessee. SDPL was incorporated only to facilitate transfer of property by the land aggregator. It was also pointed out that if such loss was not allowed then the AO should have excluded the income of SPV companies as admitted by the assessee in its books of accounts.

3.3 The Ld. CIT(A) rendered a finding that while the assessee wrote-off the advance as irrecoverable, SDPL admitted the same as its income u/s 41(1) of the Act. SDPL was only a name-lender for facilitating the transaction and except the aforesaid property, that entity had no other property. Since all the assets were sold and there was no possibility of any further transactions, the advances were written-off and offered as income by SDPL. Therefore, the assessee's loss was not a capital loss but a loss in the course of assessee's business. Reliance was placed on the decision of Hon'ble Supreme Court in the case of Mysore Sugar Company Ltd. (46 ITR 649) to support the same. Accordingly, the loss was allowed against which the revenue is in further appeal before us.

3.4 The factual matrix that the special purpose entity has offered the advances no longer payable u/s 41(1) remains uncontroverted before us.

It could be seen that the special purpose entity is only a name-lender and resultant gains as well as loss on sale of properties belong to the assessee. The advances so lost by the assessee, as rightly held by Ld. CIT(A), is nothing but a routine business loss and not a capital loss since the advances were given to acquire the inventories for the business. The observation of Ld. AO that such loss was claimed by SDPL is not borne out of facts on record. Under such circumstances, the adjudication of Ld. CIT(A) could not be faulted with. We order so.

4. The appeal stand dismissed.

Order pronounced on 3rd July, 2024

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

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

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

1. अपीलार्थी / Assessee
2. प्रत्यर्थी / Revenue
3. आयकर आयुक्त / CIT Chennai
4. विभागीय प्रतिनिधि / DR
5. गार्डफाईल / GF