

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.2658 /Chny/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s Vinodhini Hospitality P. Ltd. Trimex Towers, No.1, Subbaraya Avenue, C.P.Ramaswamy Road, Alwarpet, Chennai-600 018.	बनाम/ Vs.	DCIT Corporate Circle-3(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCV-7174-M		
(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. Sr. DR

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

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 31-07-2019 in the matter of an assessment framed by learned Assessing Officer u/s 143(3) of the Act on 06-03-2015. The assessee is aggrieved by confirmation of certain addition u/s 68 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 property development.

Proceedings before lower authorities

2.1 During assessment proceedings, it transpired that the assessee purchased certain land from Shri S.P. Velayutham (SPV) for Rs.21.32 Crores. The registered value of the property as per deed was Rs.860.65 Lacs whereas in the fixed assets, the value of land and building was shown as Rs.2074.18 Lacs. An amount of Rs.21.32 Crores was shown as liability towards an entity by the name M/s Rakindo Developers Private Ltd. (Rakindo).

2.2 It was explained by the assessee that 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 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.

2.3 It was further stated that as per terms of compromise, Rakindo received demand drafts of Rs.31 Crores and balance by way of various properties valued at Rs.139 Crores. The property received by the assessee was recorded at same agreed value i.e., Rs.20.53 Crores in its books of accounts though the guideline value was Rs.8.60 Crores. The difference of the two was recorded as Land cost for which no depreciation was claimed. The advance amount of Rs.21.32 Crores represents agreed value of property +stamp duty and registration expenses.

2.4 However, Ld. AO held that the liability of the assessee toward Rakindo was for Rs.8.60 Crores only. The excess liability was not genuine. The original transaction for purchase of land was between Rakindo and SPV. Both of them entered into a compromise pact before Hon'ble High Court. Any loss arising from the same was to be considered as loss of Rakindo. Finally, the excess liability of Rs.11.34 Crores was held to be unexplained credit u/s 68 of the Act. The Ld. CIT(A) confirmed the action of Ld. AO against which 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 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.

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. All the properties including the property held by the assessee has been agreed to be taken over at certain values. The assessee has recorded the same value in the books of accounts though the guideline value was much less. In our opinion, the facts of the case would show that Rakindo has given up its right to the extent of agreed value and discharged SPV to that extent. Therefore, guideline value would have no relevance in such a case. Further, the assessee has created corresponding liability against the recorded value and Ld. AO has invoked the provisions of Sec.68 to make impugned additions. It is quite discernible that no actual cash flows have happened between the parties. The properties have been recorded at certain value and corresponding liability has been created against Rakindo in the financial statements. This being the case, no case could be made out against the assessee to make additions u/s 68. Therefore, we have no hesitation in deleting the same.

5. The appeal stand 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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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