

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.2019/DEL/2021[A.Y 2016-17]

The A.C.I.T.
Circle - 4(2), New Delhi

Vs. M/s Boranda International Pvt Ltd
11-B, Anand Lok, Delhi

PAN - AADCB 3689 G

(Applicant)

(Respondent)

Assessee By : Shri Sushil Chadha, AR
Shri Sarthak Upadhyay

Department By : Shri Kanv Bali, Sr. DR

Date of Hearing : 08.08.2024

Date of Pronouncement : 27.08.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 2, New Delhi dated 19.09.2020 pertaining to A.Y. 2016-17.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the benefit of indexation in respect of capital gain on sale of land from the date of allotment letter although the payment for acquisition of land is made in F.Y. 2015-16 only and there is no bill available for cost of improvement.

2. On the facts and in the circumstances of the case. the Ld. CIT(A) has erred in allowing disallowance of expenses of Rs. 47,05,802/- charged to profit and loss account ignoring that the assessee has carried out no business during the year under consideration.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

3. Briefly stated, the facts of the case are that the assessee electronically filed its Return of Income on 25.05.2016 declaring loss of Rs. 61,57,265/-. Return was selected for limited scrutiny through CASS and accordingly, statutory notices were issued to the assessee alongwith questionnaire.

4. The facts of the case is that the assessee is a private limited company and during the FY 2015-16 had sold a part of land measuring 9900.36 Sq mt (out of total land of 16686.68 sq mts) located in Industrial Area, Boranada, Jaipur for a total consideration of Rs. 4,11,00,000/-. The assessee claimed benefit of indexation on the sale of 9900 sq mt and has taken cost of acquisition/improvement at Rs. 4,16,02,854/- and showed long term capital loss at Rs. 5,02,854/-

5. The Assessing Officer did not accept the cost of acquisition/improvement as worked out by the assessee. The AO calculated a proportionate total cost on the basis of proportionate land sold. The Assessing Officer also denied benefit of indexation and cost of acquisition/improvement was taken at Rs. 1,94,79,490/- and sale consideration at Rs. 4,11,00,000/-. Accordingly, the Assessing Officer worked out long term capital gain at Rs. 2,16,20,510/- and added the same to the income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act was separately initiated for concealment of income. The AO also disallowed an amount of Rs 47,05,802/- u/s 37(1) of the Act.

6. Aggrieved, the assessee went in appeal before the ld. CIT(A) who allowed the appeal of the assessee. The CIT(A) allowed the benefit of

indexation from the date of allotment letter i.e. 17.01.2008 on the basis of the CBDT Circular No. 471 dated 15.10.1986 and the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT Vs, Ram Gopal 55 Taxguru.in 536.

7. Now the Revenue is in appeal before us against this action of the Id. CIT(A).

8. Fulcrum of the quarrel on the issue of capital gains, revolves around two issues one being the benefit of indexation available to the assessee and second the cost of acquisition/improvement of the land sold. The Id AR of the assessee vehemently argued that the assessee was allotted a land of 16686 sq mts, vide allotment letter dated 17.01.2008 by RSIDICL, a Rajasthan Government Undertaking, at a cost of Rs 1,74,36,870/-. The Id AR submitted that the AO erroneously disallowed the indexation from FY 2007-2008 by disregarding the allotment letter in absence of registered sale deed. The Ld AR relied upon the CBDT Circular No. 471 dated 15.10.1986 and the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT Vs Ram Gopal (supra) for the proposition that the allottee gets the title of the property on the issuance of the allotment letter and hence the

assessee should be allowed to claim indexation benefit from FY 2007-2008.

9. On the issue of cost of acquisition/improvement, the ld AR submitted that since FY 2013-14, the assessee divided the said plot of land in two parcels i.e, 6786 sq mts and 9900 sq mts. and apportioned the expenditure incurred in each piece of land separately. It was submitted that for the accounting purposes, the separation of land was distinctly reflected in the books of account under the head non-current assets. Whenever any cost was incurred on a parcel of land, the same was reflected separately for that parcel of land in the books. It was submitted that on the land admeasuring 6786.8 sq mts, the assessee constructed a factory building, purchased and installed plants and machinery on it. The land admeasuring 9900 sq mt was kept separately for other purposes. It was argued that the AO, however, ignored the separation made in the books of account and therefore he calculated the proportionate cost of acquisition for the 9900 sq mt piece of land.

10. Per contra the ld DR vehemently defended the AO's order and argued that the AO has rightly taken proportionate cost of acquisition of land of 9900 sq mts. It is argued that the assessee failed to provide

any evidence on account of expenses of Rs 65,78,905/- out of Rs 93,05,215/- on account of improvement on the land in the impugned FY 2015-16, on boundary wall, land filling, boundary construction and land leveling. It was argued therefore, that the Assessing Officer validly reached the conclusion that expenses to the extent of 65,78,905/- cannot be considered as cost of the improvement.

11. We have heard the rival submissions and have perused the relevant material on record. On the issue of indexation, we find that the CBDT Circular No. 471 dated 15.10.1986 and the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT Vs, Ram Gopal (supra) squarely applies to the facts and circumstances of the case. In the case of CIT Vs. Ram Gopal [supra], the Hon'ble Jurisdictional High Court has held as under:

This Court, in the decision reported as Gulshan Malik v. CIT [\[2014\] 223 Taxman 243/43 taxmann.com 200](#) had the occasion to, inter alia, consider what amounted to acquisition of a capital asset - though in the context of a claim that capital gains had accrued due to the sale of the property. The facts in that case were that the assessee had booked a flat, and was recipient of a provisional allotment letter. Subsequently, the transaction was converted into a written agreement to sell. The Court, noting the contentions of the parties and also, significantly, taking note of the definition of "transfer" and

"capital asset", was of the opinion that "capital asset" has been defined in extremely wide terms - A reference to Section 2(47), which defines "transfer", and particularly its second Explanation to Clauses (v) and (vi) made it clear that possession, enjoyment of property as well any interest in any of transferrable capital asset was included within the ambit of "capital asset". The Court held importantly that even booking rights or rights to purchase the apartment or to obtain its letter was also capital asset."

12. Further the said CBDT Circular dt.15/10/1986 has stated that "the allottee gets title to the property on the issuance of the allotment letter and the payment of installments is only a follow up action and taking the delivery of possession is only a formality"

13. In view of the facts enumerated hereinabove and in the context of the Board's Circular No. 471 dated 15.10.1986 and the decision of the Hon'ble Jurisdictional High Court in CIT vs. Ram Gopal (supra), we hold that the Assessing Officer has erred in denying the benefit of indexation from FY 2007-08. In that view of the matter, the assessee is allowed benefit from the date of allotment letter i.e. 17.02.2008. To that extent, the decision of the CIT(A) is sustained.

14. With respect to the cost of acquisition/improvement, two issues have emerged which require our adjudication. One pertains to determination of cost of land on proportionate basis and the other pertains to cost of improvement of land. The AO has calculated the proportionate cost of acquisition for the parcel of land admeasuring 9900 sqmts. We find that the assessee has maintained a separate account for each parcel of land in its books of account since FY 2013-14 as non-current asset. Since the accounts are separately maintained for each parcel of land, the cost of the parcel of land admeasuring 9900 sqmts can be determined and taken from the books of account itself unless it is bogus or unsubstantiated. We therefore, hold that the CIT(A) has rightly accepted the assessee bifurcation of land parcel for determining the cost of the parcel of 9900 sq mts as per the books.

15. The other aspect for determining the cost of improvement, we find that the assessee has claimed an amount of Rs 93,05,215/- in FY 2015-16. The AO has held that the assessee has not been able to substantiate the expenses on improvement of land to the extent of Rs 65,78,905/-. Before us also the ld AR admitted that details were not filed before the AO earlier but the same can be filed if required. In the light of the above, we find it appropriate to set aside the issue of

determining the cost of improvement to the file of the AO for a fresh investigation and determination. In view of the above discussion, the ground number 1 is partly allowed for statistical purposes.

16. With regard to Ground No. 2 being disallowance of expenses of Rs. 47,05,802/-, brief facts are that during the course of assessment proceedings the Assessing Officer observed that the assessee has debited Rs. 47,05,802/- as expenses under various heads, out of which assessee has paid Rs.33,63,831/- as interest to others. Further, it was observed that there has been no business in the year except the sale of land which has already been discussed above. As the assessee failed to explain as to why such expenses are being claimed when there is no revenue in the given year, the entire amount of Rs. 47,05,802/- was disallowed.

17. Aggrieved, the assessee went in appeal before the Id. CIT(A) who allowed the appeal of the assessee on this count. Now the Revenue is aggrieved and has come in appeal before us.

18. On the issue of disallowance on account of various expenses under section 37(1) of the Income Tax Act, the learned DR pointed out that a total amount of Rs 47,05,802/- under various heads were

claimed by the assessee. Out of this assessee has paid Rs 33,63,831/- as interest to others. It was the say of the DR that assessee could not justify the same and merely submitted that the TDS has been deducted on the same and that the interest has been paid on loans borrowed. It was argued by the ld DR that no business in the year was conducted except the sale of land. The DR submitted that there is no revenue in the impugned year, hence it was concluded that no business has commenced and therefore the entire amount of Rs 47,05,802/- has been disallowed u/s 37(1). The DR vehemently argued that as there is no business receipt during the year, therefore the assessee claim that business has commenced cannot be believed. It was argued by the DR that no nexus between this expense of Rs 47,05,802/- on account of interest paid to others has been established with loan borrowed for the purchase of land. It was submitted that therefore this expense should not be allowed.

19. Per contra, the ld AR of the assessee vehemently argued that the assessee has already commenced its business activity as is evidenced from the financial statement of the year ended 31.03.2015 where the company made turnover of Rs 25,000 and also claimed depreciation. It was argued therefore, that the assessee maybe allowed the expenses

claimed majority of which are in the nature of interest paid on the loan taken. It was also submitted that the person to whom interest was paid have deducted TDS and the interest income is shown by them in their income tax return. Therefore, these expenses may be allowed. The ld AR of the assessee argued that in the alternative, as the interest was paid on the borrowings for purchase of land, the expense on interest needs to be allowed to be capitalized.

20. Having heard the rival submissions, we have perused the relevant material on record. We find that the AO has not examined the issue of commencement of the business in a proper manner for allowance of expenses u/s 37(1) of the I T Act. The assessee has also not been able to substantiate the factum of commencement of business in the previous year. We also note that assessee has merely claimed that the interest has been paid towards the loans borrowed for the purchase of land which the assessing officer has not examined thoroughly. There is, however, some substance in the alternate claim of the ld AR of the assessee that where the interest paid is towards loans borrowed for purchase of land, the same may be allowed to be capitalized. We find that the complete facts on this issue have not been enquired/examined by the AO. We therefore deem it appropriate to

set aside this issue to the file of the AO to enquire and examine the facts comprehensively and reach a conclusion in accordance with law. The assessee is directed to furnish the requisite evidences/documents for examination and the Assessing Officer is directed to examine the evidences/documents and decide this issue as per the provisions of law after affording reasonable and sufficient opportunity of being heard to the assessee. The ground no. 2 is allowed for statistical purpose.

21. In the result, the appeal of the Revenue in ITA No. 2019/DEL/2021 is partly allowed for statistical purpose.

The order is pronounced in the open court on 27.08.2024.

Sd/-
[VIKAS AWASTHY]
JUDICIAL MEMBER

Sd/-
[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 27th August, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi