

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS MADHUMITTA ROY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No.2643/Mum/2024
(Assessment Year: 2013-14)**

Yogesh Narayanrao Deshmukh 1003/B4, Sai Vrundavan CHS Ltd., Nr. Cinemax Theater, Kadakpada, Kalyan, Maharashtra-421301. PAN : AKCPD0322L	Vs.	ITO-3(1), 2 nd Floor, Rani Mansion, Kurbad Road, Kalyan-421301.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Jigar Mehta, AR

Revenue / Respondent by : Shri Swapnil Savant, JCIT

Date of Hearing : 10.09.2024

Date of Pronouncement : 07.10.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 13.03.2024 for Assessment Year (AY) 2013-14. The assessee raised the following grounds of appeal:

“1. The Ld. CIT(A) erred in law and facts in not considering the submission filed by the appellant in the course of appellant proceedings.

2. The Ld. CIT(A) erred in law and facts in confirming the action of Ld. Assessing Officer in disallowing a sum of Rs. 5,88,26,237/- paid towards

removal of encroachment without considering the submission filed by the appellant.

3. The Ld. CIT(A) erred in law and facts in confirming the action of Ed. Assessing Officer in disallowing a sum of Rs.1,42,88,997/ paid for purchase of material without providing the appellant the inspector's report which was relied upon and without considering the submission filed by the appellant.

4. The Ld. CIT(A) erred in law and facts in confirming the action of Ld. Assessing Officer in disallowing an ad-hoc sum of Rs. 52,09,094/- being 25% of the total amount incurred as wages and site expenses without considering the submission filed by the appellant.

5. The Ld. CIT(A) erred in law and facts in confirming the action of Ld. Assessing Officer in disallowing a sum of Rs.42,77,000/- u/s. 68 of the Act being the amount of cash deposited in bank without considering the submission filed by the appellant.

6. The Ld. CIT(A) erred in law and facts in not adjudicating on the ground in respect of virtual uncertainty as to realization of revenue in respect of sale of plot of land.

7. All the above grounds are independent and without prejudice to each other.”

2. The assessee is an individual engaged in the business of trading in land. The assessee filed the return of income for AY 2013-14 on 30.09.2013 declaring a total income of Rs. 1,45,98,020/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the year under consideration, the assessee has sold land for a consideration of Rs. 11,59,43,276/- and has claimed various expenses in connection with the sale of the land amounting to Rs. 9,79,68,939/-. The Assessing Officer (AO) called for the assessee to furnish the details pertaining to the expenses claimed by the assessee. After perusing the detail filed by the assessee the AO disallowed the following expenses while completing the assessment under section 143(3) of the Income Tax Act, 1961 (the Act).

Nature of Addition/ Disallowance	Amount (In Rs.)
Disallowance of Encroachment Removal expenses	5,88,26,237/-
Disallowance of Material Purchased	1,42,88,997/-
Disallowance of Daily wages & Site Expenses	52,09,094/-
Unexplained Cash Deposit u/s. 68	42,77,000/-
Total	8,26,01,328/-

3. Before the Id. CIT(A) the assessee raised various grounds contending the disallowances made by the AO on merits. The assessee also raised the ground stating that there is uncertainty in realization of the revenue recognized for the year under consideration in respect of the sale of plot of land in view of the restraint to perform the contract. The assessee with regard to this ground filed the following additional evidences before the CIT(A) and prayed for admission of the same as per Rule 46A of the Income Tax Rules, 1962 (the Rules).

(i) Letter dated 14.06.2019 through an Advocate to Vihang Astha Housing Projects LLP (VAHPLLP) for termination of agreement of sale dated 11.02.2013.

(ii) Intervention of the assessee in the Court of Special Judge under section 6 of MP ID Act, 1999 on 03.07.2019 vide Miscellaneous Application No. 451/2016 in MP ID Spl. Case No. 01/2014.

4. The CIT(A) however did not consider / adjudicate the ground raised by the assessee and also did not mention anything with regard to the additional evidences filed by the assessee. The CIT(A) completed the appellate proceeding by confirming the various disallowances made by the AO with respect to the expenses claimed by the assessee.

5. The Id. AR submitted that the CIT(A) has not adjudicating the ground raised by the assessee pertaining to the income recognized by the assessee in the return of income. The Id AR further submitted that when the income recognized by the

assessee itself is contended as not accruing to the assessee, there is no question of disallowing the expenses would arise. The Id AR also submitted that the CIT(A) failed to consider the additional evidences submitted in this regard. Accordingly the Id AR prayed that the issue may be restored back to the CIT(A).

6. The Id. DR on the other hand contended that the assessee himself has offered the income and has claimed expenses against the same and therefore the assessee now cannot raised the issue of taxability of income on sale of land. The Id DR accordingly supported the orders of the lower authorities.

7. We heard the parties and perused the material on record. The assessee is in the business of trading in lands. During the year under consideration, the assessee has claimed various expenses pertaining to sale of land and the AO has disallowed the same stating that the expenses are not substantiated. Before the CIT(A), the assessee raised a fresh claim that the income offered by the assessee in the return of income is not correct, for the reason that the sale of land did not go through and the consideration has not been received. The assessee also submitted additional evidences before the CIT(A) under Rule 46A in this regard. From the perusal of the CIT(A) order, we notice that the CIT(A) has not adjudicated the ground raised by the assessee and has also not stated anything with regard to the additional evidences filed by the assessee. Considering the fact when the taxability of the income of the assessee is being contended we are of the view that the said contention has to be examined first and then the allowability of expenses claimed against the said income has to be verified accordingly. Since the CIT(A) has not adjudicated issue with regard to the taxability of the income of the assessee we are of the view that it is appropriate to remit the appeal back to the CIT(A) for a denovo consideration including the additional issue raised by the assessee with

regard to the taxability of income from the sale of land. The CIT(A) is directed to consider the additional evidences filed by the assessee and decide the appeal on merits in accordance with law. It is ordered accordingly.

8. Since we have remitted the appeal back to the CIT(A) for a denovo consideration the grounds raised by the assessee with regard to disallowances of expenses have become infructuous and dismissed accordingly.

9. In result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 07-10-2024.

Sd/-
(MADHUMITTA ROY)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai