

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "E" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI NARENDERKUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 4569/Mum/2024  
Assessment Year :2021-22

ACIT-32(1), 2 <sup>nd</sup> Floor, Kautilya Bhavan, BKC, Bandra East, Mumbai.	vs.	H.K. Pujara Builders, 301, Krishna Kunj, V.L. Mehta Road, JVPD, Vile Parle West, Mumbai PAN : AAAFH7230H
(Appellant)		(Respondent)

For Assessee :	Shri Prakash Jotwani
For Revenue :	Shri G. Santosh Kumar, Sr. DR

Date of Hearing :	17-10-2024
Date of Pronouncement :	22-10-2024

**PER B.R. BASKARAN, A.M :**

The Revenue has filed this appeal challenging the order dt.08-07-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2021-22. The decision rendered by the Ld.CIT(A) on the following issues are being challenged by the Revenue:

- Disallowance of Municipal Taxes – Rs. 1,27,23,301/-
- Disallowance of rent and brokerage expenses -Rs. 11,05,000/-
- Addition of notional rent – Rs. 13,20,000/-
- Adhoc disallowance made out of salary and electricity expenses

2. The assessee is a partnership firm engaged in the business of building and construction of residential and commercial real estate projects. The Assessing Officer (AO) completed the assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act') by making the above said disallowances. All these disallowances were deleted by the Ld.CIT(A) and hence, the revenue has filed this appeal.

3. The first issue relates to disallowance of Municipal Taxes. The assessee had paid municipal taxes on the flats which were not handed over to the buyers and claimed the same as deduction. The AO took the view that the assessee should not have incurred this expenditure. The assessee submitted that the normal trade practice in the case of real estate projects is that the builder will bear the municipal taxes levied on the flats until they were handed over to the society. However, the AO did not accept the same and accordingly, disallowed the claim of municipal taxes amounting to Rs.1,27,23,301/-.

3.1. The Ld.CIT(A) noticed that the assessee has issued letters to the prospective buyers confirming that it will bear the municipal taxes till the buildings were handed over to the organization of the allottees/the Co-operative society of the premises holders. Accordingly, he held that the contractual arrangement entered between the assessee and buyers of the flats puts liability upon the assessee to pay the municipal taxes. Accordingly, he held that the municipal taxes paid by the assessee should be allowed as deduction and accordingly deleted the disallowance.

3.2. We heard rival contentions and perused the record. We notice that the AO has made the disallowance without recognizing the underlying contractual arrangement entered between the assessee and

the buyers of the flat. As per the said arrangement, which was evidenced by the letter issued by the assessee to the buyers, it is the assessee, who has to bear the municipal taxes till the flats are handed over to the association of buyers/co-operative society. Thus, the assessee has incurred the expenditure on payment of municipal taxes out of commercial expediency, as per the prevailing trade practice. In our view, the AO was not justified in questioning the wisdom of incurring those expenditure. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting this disallowance. Accordingly, we uphold the order passed by the Ld.CIT(A) on this issue.

4. The next issue relates to disallowance of rent and brokerage expenses. The facts relating to this issue are that assessee had taken on rent a residential house for stay of its employees during the covid period. It was submitted that the said house was used by its employees. Accordingly, it claimed the rent and also brokerage expenses paid on the said flat as 'expenditure'. The AO took the view that the assessee has taken the house on rent for using it for personal purposes, but claimed the rent paid by it as business expenditure in order to minimise its tax liabilities. He also noticed that flat was taken on rent for three years, but used to accommodate its staff on temporary basis. Accordingly, he disallowed the rent of Rs.5,70,000/- and brokerage of Rs. 5,35,000/-.

4.1. Before the Ld.CIT(A), the assessee explained that it was constrained to take a house on rent during covid period and further, three of his executive employees were staying continuously therein. Other junior employees, who were assisting the senior executives, were staying for a day or two. Accordingly, it was submitted that the said house was continuously used by its employees only. It was also

submitted that relevant employees have also offered rent paid by the assessee on their behalf as perquisite to their return of income. The assessee also furnished sample copies of Form-16, showing the value of perquisite on account of accommodation provided by the assessee. In view of the above factual aspects, the Ld.CIT(A) took the view that the assessee has incurred rental expenses in order to accommodate its key employees during Covid Pandemic and hence, the same had a direct nexus with the business operation of the assessee. Accordingly, he held that the rent expenses and brokerage expenses is allowable as deduction. Accordingly, he deleted the disallowance.

4.2. We heard rival contentions on this issue and perused the record. We notice that the AO has expressed the view that the assessee has used the premises for personal purposes. However, the AO has not brought on record any material to substantiate the said view. On the contrary, it was shown by the assessee that the key employees were staying in this house continuously and they have also disclosed perquisite value of the same in the return of income. The assessee has submitted that it was constrained to take the house on rent during Covid period, which, in our view, is a business decision taken by the assessee. Accordingly, we are of the view that the assessee has proved the commercial expediency in incurring this expenditure during Covid Period. On the contrary, the AO has not supported his view that the house was used for personal purposes. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting this disallowance.

5. The next issue relates to the notional rent assessed by the AO in respect of two flats, namely, flat No. 102 and flat No. 602. The assessee explained before the AO that flat No. 102 is used as a sample flat which the assessee is required to show to the prospective customers and the

other flat No. 602 was used as customer contact center cum marketing site of the project. The AO did not accept the same and accordingly computed the notional rent of these two flats at Rs.13,20,000/- and assessed the same. The Ld.CIT(A) accepted the explanations of the assessee and accordingly deleted the same.

5.1. We heard the parties and perused the record. The submissions of the assessee that flat No. 102 was kept as sample flat and flat No. 602 was used as marketing office have not been disproved by the AO. There should not be any dispute that it is necessary for a real estate developer to keep a sample flat and a marketing office in order to promote his project. Accordingly, we are of the view that both these flats were used by the assessee for the purpose of business only, in which case, there is no requirement under the Act to compute notional rent. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting the notional rent computed by the AO.

6. The last issue relates to adhoc disallowance made out of salary/wages and electricity expenses. The AO noticed that the assessee has earned huge capital gains and rental income apart from carrying on its business activities. Accordingly, the AO took the view that major portion of the expenses have been incurred by the assessee for earning rental income and capital gains. Accordingly, he disallowed 80% of salary/wages and electricity expenses amounting to Rs.33,24,137/-

6.1. Before the Ld.CIT(A), the assessee submitted that the AO did not issue any show cause notice before making these disallowances. It was also contended that the AO could not have made these disallowances without rejecting the Books of Account. The Ld.CIT(A) accepted the above said submissions of the assessee and held that the disallowances

made without issuing a show cause notice and without rejecting the Books of Account, is not justified. Accordingly, he deleted the disallowance.

6.2. We heard the parties and perused the record. We notice that the AO has made the disallowance out of salary and electricity expenses without proving that these expenses were incurred for earning rental income and capital gain. Unless the AO prove the nexus between expenses and the rental income and capital gains, he cannot make the disallowance of part of expenses. Accordingly, we are of the view that the AO has made the impugned disallowances on surmises and conjectures, which is not permitted under the law. Further, the Ld.CIT(A) has noticed that the AO has made this disallowance without issuing show cause notice to the assessee, which is against principles of natural justice and also without rejecting the Books of Account. Hence, on conspectus of the matter, we are of the view that the AO was not justified in resorting to make adhoc disallowances of expenses. Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting this disallowance.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22-10-2024

Sd/-  
[NARENDER KUMAR CHOUDHRY]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 22-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai