

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Satbeer Singh Godara, Judicial Member and
Shri Amarjit Singh, Accountant Member

ITA No. 893/Coch/2022
(Assessment Year: 2009-10)

Good Homes Pvt. Ltd. 3rd Floor, Puthuran Plaza MG Road, KPCC Junction Ernakulam 682011 [PAN: AABCG0444L]	vs.	ACIT, Corporate Range-1 C.R. Building, IS Press Road Kochi 682018
(Appellant)		(Respondent)

ITA No. 896/Coch/2022
(Assessment Year: 2009-10)

Beaver Estates Pvt. Ltd Asian School of Architecture and Design Innovation Silversand Island, Vytilla Road Ernakulam 682019 [PAN: AADCB0193M]	vs.	ACIT, Corporate Range-1 C.R. Building, IS Press Road Kochi 682018
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Smt. V. Swarnalatha, Sr. D.R.

Date of Hearing:	19.08.2024
Date of Pronouncement:	23.10.2024

ORDER

Per Bench

These assessee's twin appeals ITA Nos. 893 & 896/Coch/2022 for AY 2009-10 arise against orders of the CIT(A)-1, Kochi and NFAC, Delhi , respectively in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act) as under : -

Sr. No.	ITA No.	AY	DIN & Order No.	Date
1	893/Coch/2022	2009-10	ITBA/APL/S/250/2020-21/1027781533(1)	24.08.2020
2	896/Coch/2022	2009-10	ITBA/NFAC/S/250/2022-23/1043214868(1)	27.05.2022

2. Cases called twice. None appears at assessee's behest. We accordingly proceed ex-parte against them.

3. The former assessee herein M/s. Good Homes Pvt. Ltd.'s appeal ITA No. 893/Coch/2022 raises the following substantive grounds: -

1. *Based on the facts and circumstances of the case, Good Homes Pvt. Ltd. (hereinafter referred to as the Appellant) respectfully craves leave to prefer an appeal against the order passed under Section 250 of the income-tax Act, 1961 (the Act) by the Commissioner of Income Tax (Appeals), Kochi-1 on the following grounds which are independent and without prejudice to each other.*
2. *That on facts and in law, the orders passed by both the Assessing Officer (hereinafter referred to as the "AO") and the Commissioner of Income Tax (Appeals) (hereinafter referred to as "the CIT(A)") are bad in law and hence void ab initio.*
3. *That in the facts and circumstances in the case, following the several unexpected and unfortunate incidents leading to abandoning the original idea of retaining the entire 30 acres of land, the appellant did not receive any revenue from transfer of the easement rights over any land and consequently the appellant did not earn any income from Easement Rights Fess as per the agreement dated 17-4-2001 during the previous year 2008-09 relevant to the assessment year 2009-10 and the corresponding issue under agitation.*
4. *On the facts and in the circumstances of the case and in law, the learned CIT(A) and the learned AO grossly erred in determining the total taxable income of the Appellant for the subject Assessment Year at Rs.73,30,680/- without allowing any deduction instead of the loss for an amount of Rs:41,03,541/- as furnished in the written submissions and other evidences filed by the Appellant at the time of the hearing in relation to assessment proceedings as well as Appellate proceedings. The learned CIT(A) as well as the learned AO should have allowed the deduction of the indexed cost of acquisition and development of the property amounting to Rs: 1,14,34,222 and determined the loss under the head income from Capital gains at Rs: 41,03,541*
5. *That on facts and in law the learned CIT(A) and learned AO grossly erred in holding that the asset under consideration in this appeal owned by the appellant is not a capital asset and therefore the income under consideration should be assessed under the head "Income from Business "and not under "Capital Gains though the asset was held as a capital asset for more than 25 years*

- a. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the view taken by the Ld. Assessing Officer that the land under consideration held by the appellant is not a capital asset and hence the alleged income from Easement Rights Fees should be assessed as Business Income.*
 - b. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the view taken by the Id. Assessing Officer that the Easement Rights Fees as specified in the agreement dated 17-4-2001 is to be assessed as business income during the assessment year 2009-10.*
 - c. *The Learned Authorities below have erred in holding that the alleged Easement Rights Fees in relation to the land owned by the group companies and as noted in the agreement dated 17-4-2001 is assessable as revenue profits and not as capital accretion assessable as capital gains as claimed by the Appellant. They failed to prove their contention with material evidence to that effect. Hence, the assessment of the sum of Rs 73,30,680/-made as revenue profits deserves to be deleted.*
 - d. *On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in not appreciating the fact that the Appellant is eligible to claim the benefit of treating the property under consideration as capital asset and the income arising out of such asset should be assessed under the head "Income from Capital Gains and not under the head "Income from Business"*
6. *Without prejudice to the above grounds, on the facts and in the circumstances of the case and in law, the learned CIT(A) and the learned assessing authority grossly erred in determining the alleged Income from Easement Rights fees at Rs: 73,30,680/ under the head Income from Business without allowing the deduction of the actual proportionate expenditure of Rs. 74,14,911,40 (indexed cost is Rs. 1,14,34,222) incurred for the purchase, development and improvement of the land under consideration*
 7. *On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the disallowance of Rs. 74,14,911.40 (indexed cost is Rs.1,14,34,222-) made by the learned AO of the expenditure incurred for the purchase and development of the property even in the computation of revenue profits.*
 8. *On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in not providing sufficient opportunity of being heard to the Appellant while passing the appellate order to explain why the Easement income should not be assessed as Income from Business.*
 9. *The claim of the Appellant as to computation of total income, the head of income as also the tax thereon, in the manner done by it in the written submission furnished at the time of the assessment proceedings, be directed to be accepted.*
 10. *The appellant prays for consequential relief in the amount of tax and interest charged on its total income*
 11. *The above grounds of appeal are without prejudice to each other.*
 12. *The Appellant crave leaves to add, amend, alter, modify and or withdraw any of the above grounds of appeal on or before the date of hearing."*

4. Learned Sr. DR invited our attention to the CIT(A)'s lower appellate discussion following his earlier findings in AY 2007-08 upholding the Assessing Officer's similar action assessing the taxpayers income involving receipts from "easement" Rights etc. as assessable under the head "business income". She next cites this tribunal's order in assessee's case itself in ITA No. 884/Coch/2022 dated 11.08.2023 for assessment year 2007-08 restoring the matter back to the Assessing Officer for his afresh appropriate adjudication as per law as under: -

"8. The assessments, in view of the foregoing, are restored back to the file of the assessing authority. We have, considering the indeterminate state of affairs, with the assessee's claims being both unsubstantiated and inchoate, construed the issue arising before us holistically, i.e., the income assessable, including the head under which it is, in the facts and circumstances of the case, i.e., in accordance with law, also addressing the additional grounds. The claim of AOP does not survive, being both untenable and without jurisdiction. As regards ERF, the assessee itself seeks its disregard despite returning it. In our view, the same could hold only where the same is shown to represent an economic charge, i.e., where one gains at the expense of the other, while, that as presented bears anomalies, discussed in detail in the order. We are conscious that assessments have been made in the group companies, assessing loss on account of ERF, and which, being undisputed, may have attained finality. That however would not detain us inasmuch as the said assessments are not before us and, two, it is only the correct legal position, and not the view of the parties in the matter, that would hold. If an assessee benefits under the circumstances, in view of the statutory limitation/s, so be it. The income arises as business income and, accordingly, is to be computed in accordance with the relevant provisions which, as observed, have been highlighted. The AO shall, where and to the extent contested, issue definite findings on each of the computational aspects, including ERF, and assess the total income in accordance with law after affording reasonable opportunity of hearing and to present its case before him to the assessee. Retention of ERF by him would again require definite findings, meeting the issues raised herein in its respect. We decide accordingly."

5. Smt. Swarnalatha further invited our attention to the latter assessee, Beaver Estates Pvt. Ltd.'s appeal ITA No. 896/Coch/2022 raising identical substantive grounds.

6. We have given thoughtful consideration to both the assessee's respective pleadings and are of the considered view that once the earlier learned coordinate bench has already restored the matter back to the Assessing Officer (supra), there is

hardly any justifiable reason for us to adopt a different approach in the assessment year. We accordingly adopt judicial consistency in absence of any distinction on facts or law, as the case may be. These twin assessee' appeals are restored to the file of the Assessing Officer for afresh appropriate adjudication in very terms. Ordered accordingly.

7. Delay of 691 days in filing the appeal ITA No. 893/Coch/2022 is condoned going by the assessee's averments in its condonation petition and the fact that hon'ble apex court's directions in [2022] 441 ITR 722 (SC) have already excluded time period from 15.03.2020 to 28.02.2022 for all intents and purposes on account of Covid-19 pandemic outbreak.

8. These twin assessees' appeals ITA.Nos.893 & 896/Coch./2022 are allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 23rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Cochin, Dated: 23rd October, 2024

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Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin