

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.577/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2017-18

Asst. Commissioner of Income  
Tax, Corporate Circle-1(1),  
Chennai

Vs. Amar Prakash Developers  
Pvt. Ltd,  
No.314, Pattamal Complex,  
G.S.T.Road, Chrompet,  
Tamil Nadu-600 044.  
[PAN: AAHCA6244J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assesse by : None  
प्रत्यर्थी की ओर से /Revenue by : Shri V.Nandakumar, CIT  
सुनवाई की तारीख/Date of Hearing : 20.08.2024  
घोषणा की तारीख /Date of Pronouncement : 14.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1059327235(1) dated 03.01.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2017-

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18. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 03.01.2024 passed by NFAC, Delhi.

2.0 The first ground of appeal is general in nature and does not require any specific adjudication. The first issue raised by the revenue through grounds of appeal No. 2 & 3 are regarding the an addition of Rs.96,41,47, 142/- made by the Ld. AO on account of variations made in the valuation of shares adopted by the assessee and those determined by the Ld. AO. The Ld. DR submitted that during the year the assessee has entered into a business succession cum transfer agreement with Shri Adarsh Surana one of the directors of the company to acquire his proprietary concern. The consideration was agreed at Rs.110,03, 66,310/- which was discharged in the form of issue of equity shares at the valuation of Rs. 188.70/share. The assessee had provided a copy of valuation of report of one M/s.SL Gadhiya and Company C.As who had done the said valuation. The Ld. AO noted that there were many disclaimer's in the para-6 of the valuation report which showed that the valuer had not committed himself or owned the valuation figures. The Ld. AO proceeded to do the valuation under Rule-11UA r.w.s. 56(2)(viib) of the Act by ascertaining the fair market value of the shares as per scheme of valuation provided in the rule. It is the case of the department that in view of the

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disclaimer's the valuation of shares based on discounted cash flow method (DCF) suffered from defects to be accepted as a credible document for the valuation. The Ld. Counsel for the assessee vehemently relied upon the decision of Ld. CIT(A) in deleting the addition. The Ld. CIT(A) reportedly held that the DCF method adopted by the assessee is correct as the same entails that financial of the company are projected with various assumptions and beliefs of the management based on their business plans. He made a presumption that the cost of inventory of the company as on 31.03.2017 was around Rs.400 Crs and therefore there cannot be any doubt in valuing the share at Rs.188.70/share. The Ld. CIT(A) had argued that Ld. AO had disregarded valuation report only on account of disclaimers by the valuer and had not given any findings as to how the projection of revenue considered for the purpose of valuation did not match with actual achievements in subsequent years.

3.0 We have heard rival submissions in the light of material available on records. In its decision taken by Hon'ble Coordinate Bench of this Tribunal in the case of Lalitha Jewellery Mart Pvt. Ltd in ITA Nos. 663, 664, 665/Chny/2019 has, examining applicability of section 56(2)(viib), held that *"if the assessing officer is not satisfied about the valuation, he has to call for material from the assessee how the valuation was made by the assessee company. Satisfaction of the Ld. AO as referred to in explanation to*

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*56(2)(viib) of the Act would be judicial satisfaction of the Ld. AO. Judicial satisfaction means the Ld. AO has to take into consideration the well established method of valuation of shares including the asset as explained in Explanation-2 to section 56(2)(viib) of the Act. It cannot be arbitrary...”.*

Hon'ble Delhi Tribunal in their decision in the case of Agro Portfolio Pvt. Ltd. 94 Taxman.112 have held that if the Ld. AO finds defects in the valuation report it can proceed to adopt its own valuation provided the data for verification was not provided by the assessee. In the above view of things we find that the Ld. AO has not done proper enquiries before arriving at his conclusions. We also do not find any attempt by the Ld. First Appellate Authority to get any such enquiries done more so when he is empowered to enter shoes of an Ld. AO. The assessing officer is the first statutory authority empowered to examine issues qua determination of correct taxable income of a tax payer. Hon'ble Apex court in judicial pronouncement Tin Box Company cited at 249 ITR 216 has laid this ratio. Accordingly we are of the view that ends of justice would be met if the matter is restored to the AO for readjudication . There fore we set aside the order of lower authorities and direct the Ld AO to do the assessment De Novo by passing an speaking order after giving due opportunity to the assessee. The assessee shall comply with all the notices of the AO and provide all required and requested details. Any non-compliance shall be

adversely viewed. Accordingly the grounds of appeal No.2 & 3 raised by the revenue are therefore allowed for statistical purposes.

4.0 The next issue raised by the appellant revenue vide ground of appeal No.4 is regarding an addition made on account of processing fees and bank charges and vide ground of appeal no.5 & 6 are regarding penal interest. It is the case of the department that Ld. CIT(A) has violated provisions of Rule-46A. the Ld. DR submitted that the Ld. AO in the assessment order at page No.19 & 20 has clearly recorded that it had requested the assessee to provide details / evidences in support of borrowing costs claimed u/s 36(1)(iii) of about Rs.41,30,64,704/-. The Ld. AO has recorded in para-7.4 of his order that the response from the assessee was insufficient and inadequate. It was argued by him in para-7.7 of the assessment order that the assessee had not given any evidence to indicate commercial expediency of the impugned financial expenses. Consequently, the Ld. AO made the addition. During the course of appellate proceedings, the Ld. CIT(A) proceeded to call for a remand report from the Ld. AO. In its remand report the Ld. AO had partly accepted assessee's case for claim of financial costs. The Ld. AO had submitted that on certain items the assessee had not, even during remand proceedings, provided the requisite details to support its case and hence cannot be allowed any relief. The Ld.CIT(A) himself in page -72 of his

order has recorded findings of the Ld. AO made through the remand report that the assessee's claim of finance costs is supported with evidence only to the extent of Rs.35,72,12,730/-. The Ld. CIT(A) provided a copy of the remand report to the assessee for rejoinder and by accepting the content of the rejoinder he proceeded to delete the additions. As regards the issue of processing fees and bank charges challenged by the revenue, the Ld. CIT(A) has accepted assessee's submissions in the rejoinder that all the details were provided to the Ld. AO. As regards the penal interest the Ld. CIT(A) has merely argued that penal interest paid to banks is an allowable deduction u/s 36(1)(iii). The Ld. DR argued that Ld. CIT(A) brushed aside Ld.AO's finding that neither during assessment proceedings nor during remand proceedings, the assessee was providing necessary details. The findings of the Ld CIT ( A) on page 72 of his order that the AO has not disputed the commercial expediency of Borrowed Bank loans has also been found to be contrary to facts on records . It was stated that the Ld AO on page 22 of his order clearly brought out that business needs of loans raised have not been established by the assessee.

5.0 We have heard the rival submissions in the light of material available on records. The Ld. AO has clearly brought out in the assessment order that the assessee had not provided him with requisite details. The assessee has not been able to controvert this finding except

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with a statement that it had provided the details to the Ld. AO, but for which there are no cogent evidences available on record. The Ld. CIT(A) has also failed to controvert the argument of the assessee that even in remand proceedings, the assessee had provided details only to the extent of Rs.35,72,12,730/- and that for balance there was no material on records.

6.0 There is sufficient force in the arguments of Ld. DR that the Ld. CIT(A) is an extension of the assessing officer and empowered to entertain evidences and details during assessment proceedings. There cannot be any arguments to this hypothesis. However, the fact remains that a quasi-judicial authority like CIT(A) is also bound to follow the rules and procedures prescribed for its functioning. Rule 46A of IT rules r.w.s 250 of IT Act empower the CIT(A) to admit evidences including additional evidences, during appeals before him, subject to the condition that it will have to give the AO an opportunity of being heard qua the impugned evidences. This rule becomes more pronounced when the AO had asked for the impugned details / evidences and the assessee had failed to file the same. It is an undisputed fact of the case that the appellant assessee had not filed the requested evidences before the AO and the Ld. CIT(A) had accorded relief on the basis of evidences / details filed before him. The view taken by the Ld CIT ( A) regarding assessee satisfying before the Ld

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AO commercial expediency of borrowing from banks has been found to totally wrong and not supported by evidence on records.

7.0 We are therefore of the view that there exists sufficient force in the arguments of the revenue qua violation of natural justice enshrined in provisions of Rule 46 A by the Ld CIT ( A) . We have also noted that the arguments put forth by the assessee are far from convincing and not supported by evidence on records. We have noted that the Ld AO had during assessment proceedings asked for submission of details and evidence from the assessee to justify its claim of expenses and the same was not provided. The assessing officer is the first statutory authority empowered to examine issues qua determination of correct taxable income of a tax payer. Hon'ble Apex court in judicial pronouncement Tin Box Company cited at 249 ITR 216 has laid this ratio. Accordingly we are of the view that ends of justice would be met if the matter is restored to the AO for readjudication. Therefore we set aside the order of lower authorities and direct the Ld AO to do the assessment De Novo by passing an speaking order in respect of processing fees and bank charges, penal interest paid to bank after giving due opportunity to the assessee. The assessee shall comply with all the notices of the AO and provide all requested details. Any non-compliance shall be adversely viewed. Accordingly the grounds of appeal raised by the appellant revenue are allowed for statistical purposes.

Accordingly, the grounds of appeal no.4, 5 & 6 raised by the revenue are allowed for statistical purposes.

8.0 The next issue arising from the appeal of revenue is qua ground 7 & 8 regarding the addition made by the Ld.AO on account long term capital loss of Rs.1,09,49,727/-. The Ld. DR informed that as per para-8 of Ld. AO's order the assessee had stated that it has sold a land acquired for Rs.3,70,71,000/- sometimes in 2012-13 for a sum of Rs.3,80,00,000/-. As the index costs of acquisition of the land was at Rs.4,89,49,727/- assessee had incurred long term capital loss of Rs.1,09,49,727/-. The Ld. DR informed that the details provided by the assessee, indicated in para-8.2 of Ld.AO's order showed that assessee was not the purchaser but the purchases were made by some lady directors of the company. The Ld. AO observed that as the assessee was not having any legal rights in respect of the impugned property its claim of long term capital loss cannot be accepted. The Ld. Counsel for the assessee argued in support of the decision of Ld. CIT(A). It was argued that the two persons namely Smt. Jyothi Surana and Sunita Surana are directors of the company who had undertaken the transaction of sale purchase on behalf of the company.

9.0 We have heard rival submissions in the light of material available on records. The addition made by the Ld. AO appears to be a case of making a hasty addition without bringing sufficient material on records and

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without giving a thorough examination of the material. The assessee has admitted that sales purchase was done by the individual ladies who were directors of the assessee's company. There is no bar on directors of the company of undertaking transactions on behalf of their company provided they are authorized to do so through Board's resolution. Neither the Ld.AO nor the Ld. First Appellate Authority has discussed anything about availability or otherwise of any such documents in this case. The Ld. First Appellate Authority has also seemingly merely accepted assessee's bland arguments. The assessing officer is the first statutory authority empowered to examine issues qua determination of correct taxable income of a tax payer. Hon'ble Apex court in judicial pronouncement Tin Box Company cited at 249 ITR 216 has laid this ratio. Accordingly we are of the view that ends of justice would be met if the matter is restored to the AO for readjudication. Therefore we set aside the order of lower authorities and direct the Ld AO to do the assessment De Novo by passing an speaking order in respect of assessee's claim of long term capital loss after giving due opportunity to the assessee. The assessee shall comply with all the notices of the AO and provide all requested details. Any non-compliance shall be adversely viewed. Accordingly, the grounds of appeal no.7 & 8 raised by the revenue are allowed for statistical purposes.

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10. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 14<sup>th</sup> , November-2024.

**Sd/-**  
**(मनु कुमार गिरि)**

**(Manu Kumar Giri)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**

**(अमिताभ शुक्ला)**

**(Amitabh shukla)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 14<sup>th</sup> , November-2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF