

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI OMKARESHWAR CHIDARA, AM

ITA No.2974/Mum/2024
(Assessment Year: 2014-15)

Evershine Developers 215, Veena Beena Shopping Centre, Opp. Bandra Station, Mumbai-400 050	Vs.	Dy. Commissioner of Income Tax Central Circle 2(4) Mumbai-400 020
PAN/GIR No. AABFE 6729 P		
(Assessee)	:	(Respondent)
Assessee by	:	ShriRohit Golecha
Respondent by	:	Ms. Sudha Ramachandran
Date of Hearing	:	13.11.2024
Date of Pronouncement	:	14.11.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-48, Mumbai(‘ld.CIT(A) for short),National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) .2014-15.

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

1) *The below grounds are without prejudice to each other.*

a) *On the facts and circumstances of the case as well as in law the Learned CIT(A) has erred in confirming the action of Learned A.O. by denying deduction of Rs. 30,01,000 under section 801B(10) of the Income Tax Act, 1961(the Act') being differential income earned by appellant on sale of flat eligible for housing project. The reasons assigned by him for doing the same are wrong and insufficient.*

b) *On the facts and circumstances of the case as well as in law the Learned CIT(A) has erred in confirming the action of Learned A.O. by denying deduction of Rs. 1,14,08,058 under section 801B(10) of the Act being write back of sundry creditors pertaining to eligible housing project. The reasons assigned by him for doing the same are wrong and insufficient.*

2) *The below grounds are without prejudice to each other,*

a) *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned A.O. by holding that the lease rentals income is in nature of "Income From House Property" and is not in the nature of "Business Income" as claimed by the appellant. The reasons assigned by him for doing the same are wrong and insufficient.*

b) *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned A.O. by disallowing depreciation of Rs. 64,48,500/- under section 32 of the Income Tax Act 1961, as claimed by the assessee in the return of the income. The reasons assigned by him for doing the same are wrong and insufficient.*

3) *The order passed by the Learned CIT(A) is devoid of any merit, arbitrary, uncalled for and bad in law, the appellant be given such relief or reliefs as prayed for.*

3. The brief facts are that the assessee is a partnership firm is engaged in a business of real estate development and the return of income for the year under consideration was filed on 28.11.2014 declaring the total income at Rs.23,53,73,440/-. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act was duly issued and served upon the assessee.

4. The ld. learned Assessing Officer ('ld. A.O.' for short) then passed the assessment order u/s.143(3) of the Act on 30.11.2016, determining the total income at Rs.25,62,31,000/- after making disallowance of deductions claimed u/s.80-IB(10) of the Act at Rs.1,44,09,050 and disallowance of depreciation claimed u/s. 32 of the Act at Rs.64,48,500/-.

5. The assessee was in appeal before the first appellate authority, challenging the assessment order.

6. The ld. CIT(A) vide order dated 22.09.2023, upheld the order of the ld.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate his claim and has been non compliant throughout the appellate proceedings.

7. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.

9. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has got a good case on the merits and prayed that the assessee may be given one more opportunity to present its case before the Id. CIT(A).

10. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

11. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present its case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on its side.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 14.11.2024

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated : 14.11.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai