

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1922/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2008-09)

The Income Tax Officer, Non-Corporate Ward-13(4) Chennai	Vs	M/s. Guru Homes, 5, PeriyarSalai, Thiru Nagar, Ashok Nagar Chennai-600 083.
		PAN: AAHFG 0077A
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Anita, Addl.CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.N.R.Krishnamoorthy, FCA

मुनवाईकीतारीख/Date of hearing	:	25.08.2021
घोषणाकीतारीख /Date of Pronouncement	:	01.09.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order passed by the learned CIT(A)-14, Chennai dated 26.03.2018 and pertains to assessment year 2008-09.

2. The Revenue has raised following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.

2.1 The learned CIT(A) is not correct in deleting the disallowance of excess claim of development expenses of Rs. 2,78,20,552/- made by the assessing officer.

2.2 The learned CIT(A) erred in allowing deduction u/s 80IB(10) though assessee did not make any such claim before the assessing officer.

2.3 The learned CIT(A) erred in his decision to allow development expenses fully during the year on the basis that assessee was granted deduction u/s 80IB(10) for assessment years 2009-10 and 2010-11 ignoring the fact that each assessment year is different and assessee has not claimed such deduction for the assessment year 2008-09.

2.4 The learned CIT(A) failed to note that assessment year 2008-09 is the first year in which assessee claimed deduction of entire development expenses as deduction and there is no consistency in approach by assessee. Further, CIT(A) ignored the fact that assessing officer has pointed out the deficiency / inadequacy in the method followed by assessee as land cost is being apportioned on the basis of extent of sales whereas development expenses is claimed fully in one year, which is against the matching principle as held by the Apex Court in the case of Calcutta Co.Ltd (37 ITR 1).

2.5 The learned CIT(A) ought to have appreciated the facts that the assessing officer never treated the excess claim of development expenses as capital expenditure but allocated such revenue expenditure on matching principle concept and balance was treated as closing WIP.

3.1 The learned CIT(A) is not correct in deleting 20% of contract expenses incurred by cash of Rs. 55,13,307/- (20% of Rs.2,75,66,537/-)

3.2 The learned CIT(A) is not correct in deleting the disallowance of contract expenses incurred by cash since, the supporting documents for claim of expenditure under the heads "Site expenses", "Earth filling charges" and "Sand" includes of Rs. 2,75,66,537 were not proper and the assessing officer pointed out defects in the vouchers which resulted in the estimated disallowance.

3.3 The learned CIT(A) failed to consider the fact that the expenditure was incurred in cash and mere production of vouchers in support of the claim for deduction of the expenditure would not prove the claim made by the assessee and it is the duty of the assessee to prove payment especially when the genuineness of payments are in doubt.

3.4 The learned CIT(A) ought to have considered the ratio of the following decisions:

CIT Vs Chandravilas Hotel (Guj) 164 ITR 102

CIT Vs Modi Stone Ltd. (Del) 203 Taxman 123 Late Gyan Chand Jam through L/H Manish Chand Jam Vs CIT (Raj) 86 DTR 81 Pragati Engineering Corporation Vs ITO (ITAT, Lucknow-TM) 137 ITD

4.1 The learned CIT(A) is not correct in granting claim of deduction u/s 80IB(10) of the Income-tax Act, since the assessee has not made any such claim in the original or revised return of income.

4.2 The learned CIT(A) failed to note that the impugned assessment was made u/s.143(3) r.w.s. 147 and re-opening of assessment u/s 147 is for the benefit of Department and assessee cannot make fresh claim as held by the Apex Court in the case of CIT Vs Sun Engineering Works (P) Ltd. (198 ITR 297)

4.3 The learned CIT(A) erred in granting claim of deduction u/s 801B(10) of the Income-tax Act, without giving opportunities to the assessing officer by remanding the matter under Rule 46A of IT Rules, 1962.

4.4 The learned CIT(A) failed to note that as per mandatory provisions in sec.801B(10) of the Act if the assessee had not filed Form 10CCB r.w. Rule 18BBB, that itself is a reason for rejection of the claim u/s 801B(10) r.w.s. 80IB(13) and 801A(7).

4.5 The learned CIT(A) failed to note that as per sec. 80AC as applicable form assessment year 2006-07, deduction u/s 801B(10) is available only if assessee furnishes return before the due date.”

3. Brief facts of the case are that the assessee, a partnership firm, is engaged in the business of construction of flats filed its return of income for assessment year 2008-09 on 30.06.2009 declaring total income of Rs.65,847/-. The assessment has been subsequently reopened u/s.147 of the Income Tax Act, 1961, for the reasons recorded as per which

income chargeable to tax had escaped assessment on account of excess claim of development cost for the assessment year 2008-09 and hence, notice u/s.148 of the Act, dated 26.04.2012 was served on the assessee. In response, the assessee submitted that return of income filed on 30.06.2009 may be treated as return of income filed in response to notice issued u/s.148 of the Act. Thereafter, case has been taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has developed housing project called 'Guru Paradise' and has debited entire development cost of Rs.3,37,75,000/- towards construction of 112 flats, even though, these flats were sold during three financial years. He further noted that the assessee has received total sale consideration for transfer of 112 flats for three assessment years starting from 2008-09 to 2010-11, however, claimed entire cost of development for assessment year 2008-09. Therefore, opined that the assessee has claimed excess development cost of Rs.2,78,20,552/- for assessment year 2008-09 and hence, called upon the assessee to explain as to why excess development cost shall

not be disallowed. In response, the assessee stated that it has started development of housing project during financial year 2006-07 and had incurred total development expenses of Rs,3,37,75,000/-. However, revenue from project has been recognized by following prescribed method of recognition of revenue as per which, excess construction cost incurred for earlier has been shown under the head closing work-in-progress. The Assessing Officer, however, was not convinced with explanation furnished by the assessee and according to him, the assessee has received construction receipts for three assessment years, whereas development cost has been booked for assessment year 2008-09 alone. Therefore, apportioned construction cost on the basis of sale consideration received for each assessment years and worked out excess development cost of Rs.2,78,20,552/- and added back to the total income of the assessee. Similarly, the Assessing Officer has made ad-hoc disallowance of 20% of various expenses including site expenses, earth filling charges, sand purchases, repairs etc. on the ground that said expenses has been incurred in cash and no supporting evidences has been

produced. The Assessing Officer further noted that although the assessee has produced self-generating vouchers, but on verification of vouchers, it was noticed that all cash payment vouchers have been prepared in such a way that each voucher was to the tune of less than Rs.20,000/-,so as to escape from the provisions of section 40A(3) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated its submissions made before the Assessing Officer and argued that the assessee is following project completion method for recognition of revenue from sale of flats and accordingly, sale consideration has been recognized as and when flats are sold. However, construction expenses has been debited into profit and loss account, as and when said expenditure was incurred, but same has been recognized under the head closing work-in-progress. Therefore, there is no error in the revenue recognition method adopted by the assessee for sale of flats. Therefore, the Assessing Officer was erred in disallowing construction expenses on the basis of sale consideration received for three

assessment years without understanding accounting policies prescribed for recognition of revenue in the case of construction contract. The assessee has also taken an alternative plea in light of provisions of section 80IB(10) of the Act and submitted that when the assessee is eligible for deduction u/s.80IB(10), then there is no question of inflation of expenditure to reduce profit, because there is no point in reducing profit when the assessee is eligible for 100% deduction towards profit derived from housing project u/s.80IB(10) of the Act. The assessee has challenged additions made by the Assessing Officer towards ad-hoc disallowance of 20% expenses on the ground that all expenditure incurred under the head site expenses, earth filling charges and sand purchases are supported by necessary evidences and the assessee has not paid cash against purchases in excess of Rs.20,000/- prescribed u/s.40A(3) of the Act.

5. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts held that assessee's claim of development expenditure for assessment year 2008-09 is correct, as per method of

accounting and principles of consistency. The learned CIT(A) further noted that it is pertinent to note that there is no revenue loss in assessee's case, because the assessee is eligible for deduction u/s.80IB(10) towards 100% profit derived from housing project. Since there was no profit for year under consideration, the assessee has not claimed deduction u/s.80IB(10) of the Act, otherwise, the assessee would have claimed deduction and in such case, even if the Assessing Officer has disallowed certain expenses, the assessee would have entitled for deduction for profit derived from relevant assessment year, accordingly, deleted additions made by the Assessing Officer towards disallowance of excess claim of development expenses. As regards, disallowance of contract expenses incurred in cash, the learned CIT(A) observed that the Assessing Officer should not have made ad-hoc disallowance of expenses without pointing out any specific defects in supporting evidences filed by the assessee. In absence of any specific observation regarding incorrectness in bills and vouchers submitted in support of expenditure, ad-hoc disallowance cannot be made. He further noted that when the

Assessing Officer has accepted claim of deduction u/s.80IB(10) for subsequent assessment year 2009-10 and 2010-11, there is no reason for the assessee to inflate construction expenses, when it is eligible for deduction for the impugned assessment year also. Accordingly, deleted additions made by the Assessing Officer. As regards, additional ground taken by the assessee claiming alternative plea for deduction u/s.80IB(10), the learned CIT(A) noted that although the assessee is entitled for deduction u/s.80IB(10) of the Act, in respect of profit derived from housing project, but because there is no profit for year under consideration on account of deletion of additions made by the Assessing Officer towards disallowance of development expenses and ad-hoc disallowance of construction expenses, there is no requirement for allowing deduction u/s.80IB(10), as there is no taxable income for the year under consideration, but in principle, accepted fact that the assessee is eligible for deduction u/s.80IB(10) of the I.T.Act, 1961. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us.

6. The first issue that came up for our consideration from ground no. 1 to 2.5 of revenue appeal is deletion of disallowance of excess claim of development expense of Rs.2,78,20,552/-. The learned DR for the Revenue submitted that the learned CIT(A) has erred in deleting disallowance of excess claim of development expenses, without appreciating fact that assessee has claimed entire development expenses in the impugned assessment years, even though it has recognized revenue from sale of flats for three assessment years including impugned assessment year. The learned DR further submitted that the learned CIT(A) failed to note that assessment year 2008-09 is the first year in which assessee claimed deduction of entire development expenses as deduction and there is no consistency in approach followed for recognition of revenue. Therefore, the learned CIT(A) is incorrect in observing that the assessee has consistently followed this method of accounting for recognition of revenue. The DR further referring to decision of the Hon'ble Supreme Court in the case of Calcutta Company Ltd. (37 ITR 1) submitted that when the assessee has apportioned cost of land on the basis of extent of sales failed to

apportion development expenses but has claimed in one year against principles of matching concept of accounting. The DR further submitted that the learned CIT(A) has erred in allowing development expenses fully during the year on the ground that assessee was granted deduction u/s.80IB(10) of the Act for the assessment year 2009-10 and 2010-11 ignoring fact that each assessment year is different and the assessee has not claimed such deduction for assessment year 2008-09.

7. The learned AR for the assessee, on the other hand, strongly supporting order of the learned CIT(A) submitted that the learned CIT(A) has appraised the facts in right perspective in light of submission of the assessee that it has followed project completion method for recognition of revenue, as per which, although, entire expenditure has been estimated but, revenue has been recognized on the basis of advances received from customers. The AR further submitted that when the assessee is having benefit of deduction for 100% profit derived from housing project, question of inflation of expenditure to reduce profit does not arise, because, if the assessee inflates expenditure it will lose benefit of deduction available towards

profit. Therefore, the learned CIT(A) after apprising facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee has developed a housing project called 'Guru Paradise' and started incurring development expenses from assessment year 2007-08 onwards. The assessee has incurred total expenditure of Rs.3,37,75,000/- for entire project. The said expenditure has been incurred in two financial years, out of which a sum of Rs.1,88,38,982/- was incurred for financial year 2006-07 relevant to the assessment year 2007-08 and further, a sum of Rs.1,49,36,017/- was incurred in financial year 2007-08 relevant to the assessment year 2008-09. The assessee is following project completion method for recognition of revenue, as per which, revenue from sale of flats is recognized only when flats are sold to customers. Further, in project completion method of accounting all construction expenses are booked as and when said expenditure is incurred. However, same will be recognized under closing

work-in-progress, till such time assessee recognizes revenue from sales. The Assessing Officer has not disputed these facts. In fact, the Assessing Officer has accepted fact that assessee has followed project completion method. However, he has apportioned development expenses on the basis of sales revenue for three years and disallowed a sum of Rs.2,78,20,552/- by reallocating expenses incurred for assessment year 2008-09 on the basis of sale revenue.

9. We have given our thoughtful consideration to reasons given by the Assessing Officer in light of arguments advanced by the learned A.R for the assessee and we do not ourselves subscribe to reasons given by the Assessing Officer for allocation of expenses on the basis of sales revenue, because the method followed by the Assessing Officer to allocate expenses for each assessment year on the basis of sales revenue is contrary to accounting standard issued by the ICAI for recognition of revenue from construction contracts. Further, as per accounting standard, an assessee, at its option can follow percentage completion method or project completion method for recognition of revenue. In project completion

method, revenue will be recognized when sales taken place, but when it comes accounting for expenses, all expenses incurred for development of project is debited into profit & loss account under respective head of account as and when said expenditure was incurred. However, same is shown under head closing work-in-progress (stock-in-trade), till revenue is recognized from project. In this case, there is no dispute the assessee is following project completion method for recognition of revenue. The assessee has incurred total development expenses in two financial years including impugned assessment year 2008-09. However, revenue from project has been recognized in three assessment years starting from assessment year 2008-09. Therefore, we are of the considered view that method of accounting followed by the assessee to recognize revenue from sales and accounting of development expenses is in accordance with prescribed accounting method suggested by the ICAI and such method has been consistently followed by the assessee. Hence, the Assessing Officer's action of allocating expenditure on the basis of sales revenue is contrary to prescribed method for accounting of construction

contracts and hence, we are of the considered view that the Assessing Officer has erred in reallocation of expenses on the basis of revenue and working out excess development cost without any basis. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards disallowance of excess development expenses. Another important aspect considered by the learned CIT(A) is eligibility of assessee for deduction u/s.80IB(10) of the Income Tax Act, 1961. The learned CIT(A) has recorded categorical finding that when the assessee is eligible for deduction u/s.80IB(10) of the Act, in respect of 100% profit derived from housing project, there is no question of inflation of expenditure to reduce profit, because it adversely impact benefit of deduction to the assessee. Therefore, on this count also reasons given by the Assessing Officer that assessee has inflated expenditure for impugned assessment year is not supported by any evidence.

10. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that there is no error in the findings recorded by the learned CIT(A)

to delete additions made by the Assessing Officer towards disallowance of excess development expenses. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the revenue.

11. The next issue that came up for our consideration from ground no.3 of revenue appeal is ad-hoc disallowance of various expenses on the ground that said expenses incurred in cash and not further, supported by necessary bills and vouchers. The Assessing Officer has disallowed 20% of contract expenses like site expenses, earth filling charges and sand purchases on the ground that the assessee has incurred expenditure in cash. According to the Assessing Officer, although, the assessee has produced certain bills and vouchers to support the expenditure, but on verification of vouchers, he was of the opinion that the assessee has prepared vouchers in such a way that each payment was shown less than Rs.20,000/- to escape from the provisions of section 40A(3) of the Act. It was explanation of the assessee before the Assessing Officer that it has incurred expenses in cash, but each payment is not in excess of prescribed limit provided

under section 40A(3) of the Act. The assessee further contended that all expenses have been incurred for development of housing project, which is supported by bills and vouchers.

12. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that learned CIT(A) has recorded categorical finding that Assessing Officer has made ad-hoc disallowance of 20% of construction expenses without pointing out any specific defects in bills and vouchers submitted by the assessee. It is a well settled principle of law by various decisions of courts and tribunals that ad-hoc disallowance of expenses cannot be made, unless the Assessing Officer points out specific defects in supporting evidences filed by the assessee. In this case, there is no observation regarding defects in bills and vouchers submitted by the assessee in respect of expenses. Although, the Assessing Officer claims that most of expenditure is incurred in cash, but he himself admitted fact that each payment is less than Rs.20,000/- prescribed u/s.40A(3) of the Act. Therefore, we are of the

considered view that once the Assessing Officer having accepted fact that cash payments for purchases does not exceed prescribed limit provided under the Act, then erred in making 20% ad-hoc disallowance of expenses. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

13. The next issue that came up for consideration from ground no.4 of revenue appeal, i.e additional ground taken by the assessee making alternative plea for deduction u/s.80IB(10) of the Income Tax Act, 1961. We find that although the Revenue has challenged findings of the learned CIT(A) towards deduction u/s.80IB(10) of the Income Tax Act, 1961, but fact remains that the learned CIT(A) has recorded categorical finding that even though the assessee is entitled for deduction u/s.80IB(10), but because there is no taxable in consequence to deletion of additions made by the Assessing Officer towards disallowance of development expenses and ad-hoc disallowance of construction expenses, he has not

allowed additional ground raised by the assessee making a claim for deduction u/s.80IB(10) of the Act. However, he has categorically stated that the assessee has satisfied conditions prescribed u/s.80IB(10) of the Act, to be eligible for deduction towards profit derived from housing project. Therefore, we are of the considered view that grounds taken by the revenue challenging findings of the learned CIT(A) in allowing claim of the assessee towards deduction u/s.80IB(10) of the Act, in principle, is merely academic in nature and does not require any specific adjudication. Hence, ground taken by the Revenue is rejected.

14. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 1st September , 2021

Sd/- (वी.दुर्गा राव) (V.Durga Rao) न्यायिक सदस्य /Judicial Member	Sd/- (जी. मंजुनाथ) (G.Manjunatha) लेखा सदस्य / Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated 1st September, 2021

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------|-------------------------|------------------------------|
| 1. Appellant | 2. Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |