

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B"
NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 2531/Del/2019
(Assessment Year: 2014-15)

M/s. Crown International C-99 Ekta Vihar Jaitpur Extension Part -1 Delhi 14 PAN :- AADFC 1985B	Vs.	The Assistant Commissioner of Income Tax Circle 41 (1) New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri V K Shabarwal Adv alongwith Shri Ashok Babbar Adv , Rakesh Chaddha CA
Department by:	Shri Mahesh Thakur SR DR
Date of Hearing :	12/05/2021
Date of pronouncement :	18/05/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

01. This appeal is filed by M/s Crown international, assessee- Appellant for assessment year 2014 – 15 against the order passed by THE COMMISSIONER OF INCOME TAX (A) – 14, New Delhi [The ld CIT (A)] dated 14/01/2019 wherein the addition made by the learned The

Assistant Commissioner of Income tax , Circle 41(1), New Delhi [the ld AO] of ₹ 37,909,943/- is confirmed. Though assessee has raised a very argumentative and detailed grounds of appeal however the solitary issue remains is a disallowance of expenditure of ₹ 37,909,943/- made by the learned assessing officer and confirmed by the learned CIT – A.

02. Brief facts of the case shows that assessee is a partnership firm engaged in the business of real estate and renting of properties. The total income of the assessee comprises of income from business and profession. Assessee has filed its return of income declaring income of ₹ 71,531,420/- on 31/11/2014. The case of the assessee was selected for limited scrutiny to examine mismatch in profit before tax as per profit and loss account and schedule BP, high interest expenditure against capital shown in the working progress et cetera.
03. On issue of various statutory notices by the learned assessing officer and details filed by the assessee, the learned AO noted that assessee has debited expense of ₹ 37,909,943/- in the profit and loss account on account of assets transferred to work in progress. In fact, on looking at the accounting treatment assessee has claimed this amount as deductible expenses. The facts stated that assessee has constructed a shopping mall on a plot having an area of 13,129 yd². It had an open area of 65% i.e. 8534 yd² and the remaining area was constructed portion. The FAR was 145.57 and the construction consisted of ground floor +5 floors besides basement. The basement was permitted to be used only as storage. The assessee has originally a car parking area of 4625 yd² out of which 4265 yd² was acquired for the purpose of Metro Rail project by DMRC and the remaining car parking area was only 3 67 yards. The assessee litigated up to the honourable Supreme Court that construction of the metro station right in front of the shopping mall would be detrimental to the entire shopping mall and to the general public as it would take away the

entire parking lot of the shopping mall and also the green area in front of the shopping mall. The assessee's SLP before the honourable Supreme Court was dismissed which was preferred against the order of the honourable Punjab and Haryana High Court's order. The assessee received a compensation of ₹ 9 crores in respect of the said acquisition of car parking area, which has been offered for taxation as business income. Against the said receipts, assessee has claimed expenditure of ₹ 37,909,943/- for using another land for the parking for shops and commercial areas sold. The claim of the assessee was that it is under an obligation to provide parking space to shop owners and the matter was contested before the land acquisition collector and other forums by the assessee as well as shop owners Association. Since the assessee has sold a commercial space to the various buyers, it was under a commercial obligation to provide them parking area. Therefore the assessee had an adjoining plot which was of slightly larger size, which was converted by the assessee into the parking area and debited cost of the said land to profit and loss account and assessee has claimed as an expenditure for the same. As the above plot of land now being given for parking area is not saleable, the assessee did not include the cost of the same in the work in progress at the end of the year. Thus, there was a debit of Rs 37,909,943/- to the profit and loss, account claimed as expenditure as a project cost.

04. Before assessing officer Assessee submitted that it is doing the business as a real estate developer and builder and thus purchased/construction cost and development cost becomes part of the closing stock of the assessee. It was stated that assessee constructed a shopping mall in Faridabad, which include shop/offices and parking area. The whole cost of construction of the shopping mall were shown as stock in trade including the cost of land at the time of sale of shops and offices sale price is credited to profit and loss and the cost of constructing area including land cost for sold area is

reduced from stock in trade. The assessee submitted the details of the opening stock as on 1 April 2014 which is ₹ 35,535,139 being stock in trade as unsold shops and offices. In assessment year 2014 – 15 are some of ₹ 54,157,061/- being cost of a vacant plot number 6A sector 15 A, Faridabad has been transferred to the inventory on 1/4/2014 to be used for parking purposes. Assessee submitted that actual use of the land permanently for parking area is only 4023 yd² costing ₹ 37,909,942/- which now cannot be used for any other purposes permanently, thus the market value of this land is zero and accordingly the closing work in progress is reduced by the above sum. Assessee submitted that the closing stock has been valued at cost or market price, which was lower and as the proportionate cost of land used for parking is just ₹ 37,909,942/- therefore same is not shown in the work in progress. In nutshell, the assessee conveyed that the cost of the land used for parking amounting to Rs 37,909,942/- is not carried in the working progress as it represents the value of parking space/parking plot for the shops already sold. Thus, in nutshell, the assessee submitted that the cost of parking space for shops already sold cannot be carried on in work in progress but has to be charged to the profit and loss account and therefore the value of this land has not been carried in work in progress at the end of the year. Assessee also stated that due to the agreement the assessee is not in position to sell the land as on the date. The learned assessing officer construed the above explanation of the assessee holding that land is considered as a non-depreciable asset, the assessee is in fact utilizing a capital asset for his business purpose. He further held that the title of the land has not been transferred at all and still lies with the assessee thus as long as the rights of the land lie with the assessee its value cannot be considered zero. He therefore held that the land in question is still capital in the nature as the expenses cannot be

booked in the profit and loss account and therefore he disallowed the same.

05. Accordingly the total income of the assessee was determined at Rs 109,441,360/- against the returned income of the assessee of Rs 71,531,420 by passing an order u/s 143 (3) of the income tax act on 30 December 2016.
06. The assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A. Before the learned CIT – A assessee contested the claim on the basis of the commercial expediency however, the learned CIT – A confirmed the disallowance for the reason that assessee was not under and legal obligation to provide the parking place to the shop owners. The learned CIT – A was also of the view that there was no evidence of any legal encumbrances on the said land has been furnished and further the assessee is free to sell that land at any time. He further rejected the letter/undertaking given by the assessee on 1/7/2013 to the various shopkeepers for allotment of parking area was held to be not having any locus standi in the matter. In nutshell, the learned CIT – A confirmed the disallowance for the reason that there were no legal encumbrances in respect of the land for parking area and therefore the addition made by the learned assessing officer was confirmed. According to him the claim is not allowable u/s 37 (1) of the act also. Therefore, the appeal of the assessee was dismissed as per order dated 14/1/2019. Assessee is aggrieved with that and has preferred this appeal before us.
07. The learned authorised representative narrated the facts as above and therefore submitted that the provision of plot of land, which is now used for parking space, has been allotted to the shop owners and offices of the mall for parking. The cost of the plot, which was given for the parking now has become the cost of the project and therefore it is required to be allowed to the assessee as a deduction. He further

submitted the various documents and the various photographs to show that impugned plot of land is used by the shop owners for parking space. He referred to the original shop/space buyers agreement entered into in the month of January 2004 with the shop owners and referred to paragraph number 2 of the agreement stating that the owner i.e. assessee is constructing a commercial complex Under the name and style of Crown Plaza plan of which is duly sanctioned by the appropriate authority. He submitted that in the sanction plan there was proper parking and therefore the same was sanctioned in the municipal area and on that promise, the buyers have bought the office complexes and shops. But due to the acquisition of the parking area of the assessee for the purpose of construction of Metrorail project, which was contested by the assessee up to the honourable Supreme Court but has lost it, has become a commercial liability of the assessee to provide for the adequate parking space to the shopping mall shop owners. The assessee was having an adjoining plot of land, which is now used for the parking. The assessee has given an undertaking to the shop owners for the above plot to be used as a parking area. On that pretext, the assessee debited the cost of this plot of land to the project cost and claimed as expenditure or the project cost. The assessee has also received a compensation of ₹ 9 crores on acquisition/surrender of the parking area originally sanctioned by them . The above sum of ₹ 9 crores is offered for taxation by the assessee. He submitted that though the assessee has not transferred the above plot of land by any legal document in the favour of shop/mall owners, the commercial liability of the assessee does not change. He further submitted that reasoning of learned CIT – A that assessee is free to sale the above plot of land though it is earmarked as a parking area for the shop owners is also devoid of any merit because assessee is Under a commercial obligation with those shop owners to provide them this

- facility for their use. Assuming meanwhile denying, the above plot of land is sold by the assessee for any reason, which has not happened even after so many years, the assessee would be offering the profit on sale of such land as its business income on complete sale consideration because original cost is claimed by the assessee as deduction in this year. Therefore the order of the learned CIT – A disallowing the claim of the assessee on this flimsy reasons cannot be sustained. He submitted that assessee has claimed a legitimate expenditure, which it has incurred for the purpose of the business, it should have been allowed to the assessee as a deduction.
08. The learned departmental representative vehemently supported the orders of the lower authorities. The learned departmental representative contested that assessee was not Under a legal obligation to provide the above plot of land as parking space to the shop owners, therefore though assessee has given the above plot of land to those shop owners for parking, the ownership of the plot remains with the assessee and is entitled to sell it off in absence of any legal obligation towards the shop owners, cost of the above plot cannot be granted to the assessee as a deduction. The learned departmental representative vehemently read the shop/space buyer's agreement entered into by the assessee with various shop owners wherein there was no requirement of providing any parking space to them. Thus, it was submitted that the order of the lower authorities are correct and in accordance with the law and therefore should be upheld.
09. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also perused the three paper books submitted by the learned authorised representative. The issue is in a narrow compass. The assessee being a builder developed a mall and sold office spaces along with shops et cetera to various buyers. At the time of approval of the plan for the mall, assessee has a

parking space also part of the mall. Based on this assessee sold office space and shops to the various buyers by entering into shop's/space buyers agreement. There is no dispute that when the permission was granted to the assessee to construct a shopping mall, Commissioner, director, Town & Country planning, municipal Corporation Faridabad the assessee was supposed to provide adequate parking space as per HUDA norms. This permission is granted by the senior town planner in terms of application of the assessee dated 29/11/1999. Which is placed at page number 35 of the paper book. Further Municipal Commissioner Faridabad issued a sanction u/s 254 of the Haryana Municipal Corporation act 1994 placed at page number 44 – 47 of the paper book as per para number 16 directed the assessee to make arrangement for sufficient parking inside the premises as per rules prevalent. Further the direction was issued by senior town planner for provision for additional parking space for 168 cars units within the premises as per norms already intimated to the assessee. Therefore the assessee was under an obligation to provide parking space to the shop buyers and general public for shopping mall. Assessee did not provide the same. Unfortunately, for the assessee near the shopping mall of the assessee a Metro station was required to be set up. Therefore, the parking area of the assessee was acquired by DMRC, consequently the assessee was granted a compensation of ₹ 9 crores, which was offered for taxation by the assessee. Now the original obligation of the assessee remained to provide a parking space to the shop owners in terms of HUDA rules and as per approved plan based on which assessee entered into agreement for sale of the property with various buyers, to provide parking space . For this purpose, assessee has an adjacent plot, which was assigned for parking space to the shop owners. This plot is now used by shop owners. Assessee demonstrated this by showing various photographs and letters to shop owners. This fact is not denied by lower authorities. Thus, it is

established fact that plot was used for the purposes of parking by shopping mall shop owners and public. Therefore, the assessee asked for deduction of the cost of the land, which is now given as a parking space that shop owners. The AO and the learned CIT – A both denied the deduction. There is no dispute on the amount as well as of the fact that the adjacent plot was used for parking space by the shop owners. The only reason is that there was no legal obligation on the assessee to provide a parking space to the shop owners and assessee has not transferred this plot of land in the name of any society or association but is still in the name of the assessee. The revenue also contends that the assessee has right to sale this plot. Though the assessee may not have a legal obligation to transfer the plot of land used for parking space by the shop owners, the commercial obligation is established that assessee has given that plot, handed over to the operating agency, which is maintaining the shopping mall to be used for parking space. When assessee has sold the shops/ offices of mall real estate by making a promise to buyer to provide facilities as per the approved plan and based on which the buyer has purchased the property, no doubt there is a commercial obligation on the assessee to provide those facilities to those shop owners who purchased those properties. Parking space is one of such condition based on which the approval was granted to the shopping mall constructed by the assessee. Therefore, it is apparent that the assessee has met its obligation by providing a plot of land to be used as a parking space by the shop owners and therefore the assessee is entitled to claim deduction of the cost of land given for parking space. Even after passing of almost a decade, the assessee has not sold that plot of land, which was used as a parking space by the shop owners. Even if it would be sold at any later point of time by the assessee, as assessee is a legal owner, the necessary profit is required to be charged to tax. In fact in the present case the full consideration received by the

assessee would be income of the assessee as assessee has already taken the cost of the plot as a deduction u/s 37 (1) or u/s 28 of the income tax act. By providing the plot of land assessee has incurred a cost of the project for providing the parking space to the shop owners, which was a commercial obligation on the assessee, the above cost is required to be granted as deduction to the assessee. Whether there was any legal obligation on the assessee for providing a parking spaces is also established as the assessee was granted permission to construct shopping mall only if it had a proper parking facility as per HUDA Rules. Thus assessee has also legal obligation to provide parking spaces to buyers of shopping complex. In view of this, we direct the assessing officer to delete disallowance of Rs. 3,79,09,943/- on account of parking space provided to shop owners/office owners of the mall. Therefore, we reverse the orders of the lower authorities and allow the appeal of the assessee.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 18th May 2021

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Date: 18/05/2021.

MEHTA

Copy forwarded to-

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi