

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO.990/Chd/2019
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Acme Builders, GH-10, JLPL, Sector-91 Mohali	बनाम	The DCIT Circle-3(1), Chandigarh
स्थायी लेखा सं./PAN NO: AAQFA9330F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmoohan Singh, Advocate
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 03/06/2021
उद्घोषणा की तारीख/Date of Pronouncement : 03/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 24/04/2019 of the Ld. CIT(A)-1, Chandigarh.

2. The only grievance of the assessee in this appeal relates to the sustenance of disallowance of Rs. 2,00,000/- made by the A.O. on account of discount given and paid to Ms. Surinderjit Kaur and Mr. Pritam Singh.

3. Facts of the case in brief are that the search and seizure operation under section 132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was conducted on the assessee on 02/05/2012. During the course of search certain agreement relating to sale of plot between different -2 persons and the assessee were found. The assessee furnished the return of income on 27/09/2013 declaring an income of Rs. 82,98,790/-. The A.O. made disallowance of Rs. 2,00,000/- by observing in para 3.1 and 3.2 of the assessment order as under:

3.1 During the course of examination of the profit and loss account, it was noticed that the assessee claimed expenditure on account of discount paid to the tune of Rs. 200000/-. Vide order sheet entry dated 09.02.2016, the counsel of the assessee was asked to file the details of discount given and the property for which it was given. In response vide reply dated 14.03.2016 it was submitted that the discount was given on account of sale of industrial plot of 500 sq yard to Ms. Surinderjit Kaur and Mr. Pritam Singh.

3.2 On perusal of various details filed by the assessee it was noticed that during the year under the consideration the assessee didn't have any income from sale of plots at yellow stone. Accordingly vide noting sheet entry dated 15.03.2016 the assessee was asked to file reply to justify its claim for the discount claimed in the profit and loss account. In response the assessee didn't file any reply. Therefore the expenditure of Rs. 200000 on discount given is treated as bogus expenditure and added to the returned income. Further penalty proceedings 271(l)(c) are being initiated for concealment of income and furnishing of inaccurate particulars of income.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

"The Ld. Assessing Officer has disallowed a sum of Rs.2,00,000/- with an observation that the discount claimed in the profit and loss account was bogus in nature and hence added back.

In this regard, it is humbly submitted that the assessee firm had booked a number of industrial plots with Sukhm Infrastructure Private Limited. SCO 123-124. Sector-17C, Chandigarh more popularly known as Yellow Stone Info City. These plots had been booked in bulk by the assessee firm to be sold from time to time to various customers.

One such plot was sold to Ms. Surinderjit Kaur wife of Mr. Pritam Singh Baiwa and Mr. Baljit Singh son of Mr. Pritam Singh Baiwa both resident of House No. 117, Phase-9, Mohali. (Copy of the allotment letter issued by M/s Sukhm Infrastructure Private Limited to Ms. Surinderjit Kaur and Mr. Baljit Singh is enclosed vide Annexure-1).

As per business practice, the initial amount of Rs. 15,80,000/- was received from Ms. Surinderjit Kaur and Mr. Baljit Singh vide three cheques on 05.01.2011. The ledger account is enclosed vide Annexure-2.

Copies of three cheques given by the allottees Mr. Surinderjit Kaur and Mr. Baljit Singh in favour of assessee firm are enclosed vide Annexure -3 and 4. The said cheques were cleared on 05.01.2011 and 12.01.2011. Copy of the statement of account of M/s Acme Builders with HDFC Bank, Sector-17C, Chandigarh, Account No. 02132320002274 is enclosed vide Annexure-5, where the three cheques issued by the allottees are credited.

Hence, from the above, it is evident that an allotment of an industrial plot was made by Yellow Stone to the above allottees and the payment was made to the assessee firm's bank account. Subsequent payments were to be given directly to M/s Sukhm Infrastructure Private Limited by Ms. Surinderjit Kaur and Mr. Baljit Singh.

As per the terms of allotment and various other conditions, the company M/s Sukham Infrastructure Private Limited could not deliver the said plot to Ms. Surinderjit Kaur and Mr. Baljit Singh on time and as a consequence the buyers insisted on cancelling the said plot. It was decided that the assessee firm will give an discount of Rs. 2,00,000/- for the said delay. Hence, two cheques bearing numbers 744331, 333 for Rs. 1,00,000/- each were issued to Ms. Surinderjit Kaur and M/s Pritam Singh HUF (wherein both the allottees were natural

members and an amount of Rs. 7,00,000/- had been received on 12.01.2011 from M/s Pritam Singh HUF as booking amount). This is for reference and information.

The discount cheques were cleared from the assessee's firm account in April 2012. Copy of the assessee firm's account statement with HDFC Bank, Sector 17C, Chandigarh, account No. 02132320002274 wherein, the payment of Rs. \ 1,00,000/- each to Ms. Surinderjit Kaur and Mr. Baljit Singh (Pritam Singh HUF account) is reflecting is enclosed vide Annexure -6. The copy of PAN numbers of Mr. Surinderjit Kaur and Mr. Baljit Singh are enclosed vide Annexure -7 and 8 as proof of identity of said buyers.

It is humbly submitted that an amount of Rs.15,80,000/- was received from Ms. Surinderjit Kaur and Mr. Baljit Singh for booking an industrial plot with Yellow Stone wherein the assessee firm was a broker/ agent and due to non fulfillment of sale condition by Yellow Stone, the assessee firm gave an additional discount of Rs. 2,00,000/- on its own account to keep and retain the customers etc.

Prayer

It is evident from the above that there was a genuine discount given to Ms. Surinderjit Kaur and Mr. Baljit Singh and no bogus entries were passed. The discount of Rs.2,00,000/- given may kindly be allowed as genuine business expenditure."

4.1 However the Ld. CIT(A) did not find merit in the above submissions of the assessee and sustained the disallowance by observing that the assessee neither before the A.O. nor before him furnished any document containing to such Terms & Conditions to justify the claim of discount except the ledger account and entry in the bank account which were self serving document.

5. Now the assessee is in appeal.

6. Ld. Counsel for the Assessee submitted that neither the A.O. nor the Ld. CIT(A) asked for any fresh evidence and whatever was related to the claim of the assessee was furnished before the authorities below. It was stated that the assessee may produce all the documents if required by the A.O. to justify its claim of discount given to the customers.

7. In her rival submissions the Ld. Sr. DR supported the orders of authorities below and further submitted that since the assessee could not produce any document to substantiate its claim either before the A.O. or before the Ld. CIT(A). Therefore, the disallowance was rightly sustained by the Ld. CIT(A).

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not clear as to whether the

A.O. or the Ld. CIT(A) asked any fresh evidence from the assessee to justify its claim of discount amounting to Rs. 2,00,000/-. We therefore by keeping in view the peculiar facts of this case, deem it appropriate to set aside this issue back to the file of the A.O. to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 03/06/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member
AG
Date: 03/06/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar