

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' 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.2190/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Shri Sai Varsha Enterprises 9, Trevelyan Basin Street, Sowcarpet, Chennai-600 079.	Vs	The Deputy Commissioner of Income Tax, Non-Corporate Circle-14, Chennai.
PAN: ABSFS 9527D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.Banusekar, C.A.
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R.Anita, JCIT

सुनवाईकीतारीख/Date of hearing	:	15.06.2021
घोषणाकीतारीख /Date of Pronouncement	:	21.06.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned CIT(A)-7, Chennai dated 28.06.2019 and pertains to assessment year 2013-14.

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

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of natural justice, equity and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowances of architect fees of Rs.2,00,000/- and brokerage of Rs.1,96,374/-.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the architect fees and brokerage are allowable expenditure.

5. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of sales tax and service tax paid of Rs.15,37,1891- and Rs.21,36,892/- respectively.

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the collections from the customers were inclusive of taxes and were included in gross receipts.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate the fact that the appellant had adopted compounded rate scheme in VAT.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate the evidences submitted by the appellant for the payment of sales tax and service tax.”

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of development of building and promotion of flats filed its return of income for assessment year 2013-14 on 30.09.2013 declaring total income of Rs.64,83,280/-. The case was taken up for assessment and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has debited various

expenses including Architect fee, brokerage and land development expenses incurred in respect of Sri Perumbakkam project. However, said project was not completed for the year under consideration and hence, opined that expenditure debited into profit & loss account cannot be allowed as deduction. Therefore, said expenditure has been disallowed and added back to the total income of the assessee. Similarly, the Assessing Officer has noticed that the assessee has debited sales tax & service tax into profit & loss account and hence, opined that sales tax & service tax collected in respect of flats sold to customers is not deductible expenses and hence, disallowed said expenditure and added back to the total income of the assessee.

4. The assessee carried matter in appeal before learned CIT(A) and agitated additions made by the Assessing Officer towards disallowance of expenses and disallowance of sales tax & service tax paid on the ground that expenses incurred towards land development was not claimed as deduction, but added in work-in-progress account, therefore, same cannot be disallowed. The assessee further contended that Architect fee

and brokerage expenses are general in nature without specific to any project and hence, same cannot be disallowed, even though, the project was not completed in the relevant assessment year. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of details of opening and closing work in progress deleted disallowance made by the Assessing Officer towards land development expenses of Rs.13,74,384/-. However, as regards, Architect fee and brokerage, the learned CIT(A) observed that the assessee has not furnished any evidence to prove said expenditure and hence, confirmed addition made by the Assessing Officer. Similarly, as regards disallowance of sales tax & service tax, the learned CIT(A) has observed that sales tax is not an expense and hence, it cannot be debited into profit & loss account, therefore, there is no error in the addition made by the Assessing Officer and hence, confirmed disallowance of service tax & sales tax debited into profit & loss account. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the learned CIT(A) has erred in confirming disallowance of Architect fee and brokerage expenses debited into profit & loss account without appreciating the fact that issue before the Assessing Officer was whether said expenditure was deductible or not, but the Assessing Officer never asked the assessee to furnish necessary evidence. Therefore, on this ground the learned CIT(A) cannot confirm additions made by the Assessing Officer. The AR further submitted that sale tax & service tax debited into profit & loss account is paid on sales made by the assessee for the year and further, the assessee is following composite method of payment of sales tax, as per which sales tax & service tax cannot be collected from customers. Further, when the taxes are not collected from customers and paid by the assessee, then same is an expenditure which is deductible under the Act. However, for the limited purpose of verification of facts with regard to non-collection of taxes from sales, the matter may be set aside to the file of the Assessing Officer to verify records.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has failed to file any evidence to prove that expenditure debited into profit & loss account . Further, the assessee has not filed any evidence to prove that taxes debited into profit & loss account was not collected from customers. However, to give another opportunity to the assessee, the issue may be set aside to the file of the Assessing Officer.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. As regards disallowance of Architect fee and brokerage expenses, the Assessing Officer has disallowed said expenses only on the ground that Sri Perumbakkam project was not completed for the year under consideration, but never called for any proof of expenses, whereas, the learned CIT(A) has confirmed additions made by the Assessing Officer on the ground that assessee has not furnished any evidence. It is a claim of the learned AR for the assessee that had been the Assessing Officer called for evidence for expenses, the assessee could have furnished said evidence. Therefore,

considering the fact that the assessee was not given opportunity to furnish necessary evidence in support of its expenses, we are of the considered view that issue needs to go back to the file of the Assessing Officer to give another opportunity to the assessee to file necessary evidence in support of its expenses.

8. As regards disallowance of sales tax & service tax, the claim of the assessee before learned CIT(A) was that it has opted for composite scheme of payment of sales tax & service tax and as per said scheme, taxes on sales cannot be collected from customers. Further, sales tax & service tax is an item of expenditure, which is deductible in case same is paid by the assessee without collecting from customers. Therefore, we are of the considered view that Assessing Officer as well as learned CIT(A) were erred in disallowing sales tax & service tax debited into profit & loss account by holding that sales tax & service tax is not an expense. Further, fact with regard to whether the assessee has collected taxes from customers or not is not coming out from records. Therefore, to ascertain the facts, issue has been set aside to the file of the Assessing

Officer and direct him to cause necessary enquiries and if the Assessing Officer found that the assessee has opted composite method of payment of taxes without collection of taxes from customers, then Assessing Officer is directed to allow sales tax & service tax paid by the assessee as deductible expenses.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 21st June, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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