

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवम्**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ITA No.2063/Chny/2015  
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

<b>ACIT</b> Central Circle -1(3), 46, Nungambakkam High Road Chennai – 600 034.	<b>बनाम/</b> Vs.	<b>M/s. Ankur Foundation P. Ltd</b> No. 49 (Old No. 25), II Floor Barnaby Road, Kilpauk Chennai – 600 010.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAECA-2389-R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri S. Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Ms. Ann Mary Baby (CIT) –Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	23-02-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	07-03-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 31-07-2015 in the matter of

assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-03-2013. The grounds raised by the revenue read as under:

1. The order of the learned commissioner of Income Tax (Appeals) is contrary to law and facts of the case.
2. The learned CIT(A) has erred in directing the Assessing Officer to delete the disallowance of Rs.7,64,21,763/-made towards interest cost.
  - 2.1 The Id.CIT (A) having stated that the assessee is following revenue recognition on completion of the project as per AS 9 and project completion method as per AS 7, ought to have appreciated that the assessee had not shown the land under the head "Stock in trade" in the P&L account but disclosed the same under the head "Current Assets" in the balance sheet.
  - 2.2 The Id. CIT (A) has failed to appreciate that the assessee being in the business of "real estate and construction business" ought to have treated the land as "Stock in trade" in the P&L Account and ought to have shown the cost of land as expense in the P&L account in the year of purchase and that subsequent interest expenditure ought to have been treated as revenue expenditure in the year in which such interest accrued.
  - 2.3 The Id.CIT(A) ought to appreciate that no closing stock has been reflected in the P&L account for the previous year i.e. year ending 31.03.2009.
3. The learned CIT(A) has erred in directing the Assessing Officer to allow the claim of payment of compensation expenses of Rs.2 crores.
  - 3.1 The learned CIT(A) having held that the assessee had advanced the impugned amount to M/s. Gee Gee Hire and Leasing Pvt. Ltd as part of its regular business and since the advance could not be recovered, the same is written off in the books, has failed to appreciate that the assessee did not adduce any proof at any point of time during the assessment proceedings to prove the entire transactions.
  - 3.2 The learned CIT(A) having held that the said amount has been recovered by the assessee and was offered to tax in the succeeding Financial Year, has not elaborated the material evidence produced by the assessee in this regard.
  - 3.3 The Id.CIT(A) having powers coexistent and coterminous as that of the Assessing officer ought to have caused the assessee to produce the evidence as in the absence of the same it could not be immediately ascertained whether the said amount has been offered to tax in the succeeding Financial Year.
4. The learned CIT(A) has erred in directing the Assessing Officer to delete the disallowance of Bad Debts of Rs.20 lakhs
  - 4.1 The learned ICT(A) has failed to appreciate that no evidence was filed by the assessee either during the course of assessment or during the course of appeal proceedings with regard the fact that the amount of advance was taken into account in computing the total income of the year in which the impugned advance was made so as to become eligible for deduction.
  - 4.2 The learned CIT(A) having held that the amount written off shall qualify to be allowed u/s. 37(1) of the IT Act, 1961, has failed to appreciate that since the condition laid down u/s. 36(1)(vii) r.w.s. 36(2) of the IT Act are not satisfied, the deduction ought not have been allowed.
5. For these grounds and any other grounds that may be raised during the course of the appeal proceedings, the order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

As evident the subject-matter of appeal is interest disallowance and disallowance of compensation / bad-debts as claimed by the assessee.

2. Having heard rival submissions and after going through relevant material on record, our adjudication would be as under.

3. Interest Disallowance u/s 36(1)(iii)

The assessee is stated to be engaged as contractor and property developers. The assessee sold certain land situated at Semmancheri for Rs.2100 Lacs. The land was purchased during March, 2005 for Rs.172.73 Lacs and reflected as 'current assets' in the Balance Sheet. The proportionate interest expenditure incurred from financial years (FY) 2006-07 onwards was added to the cost of the land and accordingly, the cost of the land was enhanced to that extent. The cost of land including interest aggregated to Rs.360.99 Lacs in this year which was debited in the Profit & Loss Account.

The assessee explained that interest expenditure has been apportioned between the various properties on pro-rata basis and the properties were held as 'current assets' for re-sale / development and not as a 'capital asset'. The assessee submitted that Accounting Standard-2 was not applicable since the same would apply for inventories arising under construction contracts. As per Sec.36(1)(iii), interest paid for capital borrowed for the purpose of Business / profession would be allowable as deduction. The interest paid was period cost and allowable in the year of payment itself. However, since there was no matching revenue, the interest was transferred to land cost on pro-rata basis. This method was stated to be consistently followed for past several years.

However, Ld. AO held that the assessee was apportioning interest cost without any scientific basis. The Accounting Standard-2 (AS-2) relating to valuation of inventories would be applicable. As per AS-2, the expenditure incurred against inventories to bring them into existence and

to bring stock into present position was to be added to the value of the stock. Accordingly, rejecting the method of accounting being followed by the assessee, the interest cost of Rs.581.07 Lacs as taken in Profit & Loss Account was disallowed. The balance interest of Rs.183.14 Lacs (after adjustment of Sec.14A disallowance) was also disallowed and added to the cost of projects for which the assessee had entered into joint development agreement (JDA) with others.

The Ld. CIT(A), after considering assessee's submissions, noted that the assessee was following consistent method of revenue recognition on the basis of project completion method. The expenses incurred on the project would thus be shown as work-in-progress till the date of completion of the project. The interest cost was distributed pro-rate across all properties held by the assessee. Such a method of accounting was regular method being followed by the assessee. The sale consideration of the land was offered as 'business income' in this year. Therefore, Ld. AO was not justified in rejecting the regular method of accounting being followed by the assessee. The closing stock valuation as arrived at by the assessee for various properties was tabulated in para 4.2.1 of the order on the basis of which it was concluded that the impugned disallowance was not justified. Aggrieved, the revenue is in further appeal before us.

Upon due consideration of material facts, we find that the assessee is engaged in real estate and procure land for business purposes. The interest paid by the assessee has been added on pro-rate basis to various land owned by it. In the year of sale, cost of land including interest has been debited in the Profit & Loss Account. The assessee has consistently followed this method of accounting for various years

and the same has been accepted by the revenue. If the interest cost is not allowed to the assessee, the same would never be allowed to the assessee since it is not the case of Ld. AO that the assessee is claiming double deduction of interest expenditure. It could also be seen that interest cost is a period cost and allowable to the assessee in the year in which it has been incurred. However, the assessee has chosen to claim the same only in the year when the land is sold. Thus, no infirmity could be found in the impugned order, on this issue. The ground thus raised stand dismissed.

#### 4. Disallowance of Commission Paid

The assessee paid Rs.200 Lacs as compensation towards one property *Kushal Das Garden*. The joint-owners of this property entered into joint development agreement (JDA) with another entity namely M/s Gee Gee Hire Purchase & Leasing Private Ltd. (GHLPL). Since GHLPL was unable to progress with development, the agreement was cancelled and the owners entered into another MOU with the assessee for development of the property. As per the terms of the agreement, it was the responsibility of the assessee to settle the matter of JDA with GHLPL. Accordingly, a compensation of Rs.200 Lacs was stated to be paid by the assessee to GHLPL and the same was claimed as project expenditure.

However, the claim was rejected by Ld. AO on the ground that it was the duty of land owners to give possession of the land free from any claim or encumbrance. The payment was nothing but charity and the payment was not supported by the terms of the agreement / MOU. Therefore, the amount of Rs.200 Lacs was added back to the income of the assessee.

During appellate proceedings, it was submitted that since the assessee wanted to develop the property at the instance of the owners, the amount was paid to the original agreement holder to cancel their right. However, the project did not materialize and hence the amount paid by the assessee was claimed as project expenses. The expenses were incurred in the regular course of business of property development. Another pertinent fact brought to the notice was that the assessee took steps to collect the amount from the owners and succeeded in realizing the same. The same was offered to tax in AY 2011-12.

Concurring with assessee's submissions, Ld. CIT(A) deleted the disallowance. Aggrieved the revenue is in further appeal before us.

We find that the amount was paid by the assessee in the regular course of its business to settle the claim of the earlier developer. It is also undisputed fact that the amount was subsequently recovered by the assessee and offered to tax during AY 2011-12. Therefore, impugned order does not call for any interference on our part. The grounds thus raised stands dismissed.

#### 5. Bad-Debts

The assessee claimed bad-debt of Rs.20 Lacs written-off against Mr. K.M.Pitchai. The same was held to be not allowable under any of the provisions. During appellate proceedings, it was explained that the assessee paid land advance of Rs.25 Lacs to Mr. Pitchai in AY 2006-07. Since Mr. Pitchai could not fulfil the promise, the assessee demanded the return of money. An amount of Rs.5 Lacs was received during April, 2008 and the balance amount was not received. The assessee took legal action for recovery of the same. Since the advance was paid in the

regular course of business and the same was lost, it was claimed as bad-debts.

Concurring with the same, the expenditure was held to be allowable expenditure u/s 37(1). Aggrieved the revenue is in further appeal before us.

We find that this amount has been lost by the assessee in the regular course of its business. Any such loss has rightly been held to be allowable u/s 37(1). Finding no infirmity in the impugned order on this issue, we dismiss the grounds thus raised by the revenue.

6. The appeal stands dismissed in terms of our above order.

Order pronounced on 07<sup>th</sup> March, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 07-03-2022

**JPV**

**आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A) 4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF