

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.386/PUN/2020
निर्धारण वर्ष / Assessment Year : 2014-15

ITO, Ward-7(1), Pune.	Vs.	M/s. Sarsan Developers, 14A & B, Elephinstone Stone, Opp. East Street Post Office, Camp, Pune- 411001. PAN : ABJFS4506M
Appellant		Respondent

Revenue by : Shri M. G. Jasnani
Assessee by : Shri Kishor Phadke
Shir Suhas P. Bora

Date of hearing : 08.09.2023
Date of pronouncement : 10.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)-8, Pune [‘the CIT(A)’] dated 13.12.2019 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the assessee is a partnership firm engaged in the business of development of lands. The Return of Income for the assessment year 2014-15 was filed on 29.11.2014 declaring Rs.Nil income. Against the said return of income, the assessment was completed by the Income Tax Officer,

Ward-7(1), Pune ('the Assessing Officer') vide order dated 23.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.Nil after making addition of Rs.5,60,73,319/- being the amount paid to be retiring partner, namely, Kumar Housing Corporation Limited. The factual background of the case is as under :

During the previous year relevant to the assessment year under consideration, the assessee firm debited development expenses of Rs.13,40,50,885/- which includes an amount of Rs.5,60,73,319/- paid to retiring partner, namely, Kumar Housing Corporation Limited. The factual background of the issue was explained by the assessee vide his letter dated 30.11.2016, which is extracted by the Assessing Officer vide para no.4.1 of the assessment order, which reads as under :-

"Sarsan Developers Private Limited (SDPL) and Kumar Housing Corporation Limited (KHCL) had entered into an agreement forming a Registered Firm namely Sarsan Kumar Developers (SKD) on 21.10.2006, to develop its property located at No.367+368+369+372+373+374, Narayan Peth, Laxmi Road, Pune 411 030.

The Market conditions was of recessionary Nature during 2009 to 2013 due to which Kumar Housing Corporation Limited (Builders) was not interested to develop/continue the development of the property.

The matter had to come to a dead lock situation in 2013. Hence, SDPL has decided to remove KHCL from the Partnership firm SKD. As per Para No.16 of the registered partnership deed between the parties, compensation needs to be paid to the partner in the event of his removal/ exit before completion of the project, as per market rate.

Since the property was not developed fully, as per mutual consent, SDPL has repaid Rs. 10,000/- towards Fixed Capital Rs.1,22,25,442/-

towards Current Capital Rs. 78,26,720/- for the period 01.04.2013 to 01.08.2013 SDPL has also paid the exit cost of Rs.4,99,90,000/- as per agreed terms to the outgoing partner KHCL towards settlement.

The assessee firm has thus paid Rs.5,60,73,319/- as settlement cost to Kumar Housing Corporation Limited.

In the event, the above cost may not be allowed as an expenditure towards the project, the same should be allowed to be amortised once the sale of the properties commence.

The assessee has treated the above settlement cost as an expenditure, which is duly transferred to capital work in progress. This cost will be offered as revenue expenditure in the year once sale of properties commence in future.

The total saleable area of the project after completion will be 48,000 sq.ft. and taking into account average price realization of Rs.15,000/-, the total revenue will be approx Rs.72, Crore.”

3. The Assessing Officer was of the opinion that the amount paid on retirement of partner cannot be allowed as deduction and, accordingly, added to the closing work-in-progress by disallowing the same as deduction u/s 37(1) of the Act.
4. On appeal before the Id. CIT(A), the Id. CIT(A) held that the provisions of section 45(4) of the Act has no application and, therefore, disallowance of payment by holding to be capital expenditure is not justified, it should be allowed as revenue expenditure.
5. Being aggrieved by the decision of the Id. CIT(A), the Revenue is in appeal before us in the present appeal.

6. It is contended on behalf of the Revenue that the ld. CIT(A) without appreciating proper facts of the case wrongly held that the amount paid to the retiring partner is revenue nature.

7. On the other hand, ld. AR submits that the amount was paid to the retiring partner on account of settlement arrived at between two partners towards the expenditure incurred at that time and, therefore, it is not the amount paid to the retiring partner.

8. We heard the rival submissions and perused the material on record. We had carefully gone through the registered settlement deed, wherein, it clearly shows that the amount of Rs.4,99,90,000/- was paid to the retiring partner in terms of settlement arrived at between two partners for giving up his interest in the partnership firm, there cannot be any dispute that the amount paid to a retiring partner for giving up his interest in the partnership firm is a capital expenditure. Reference in this regard can be made to the following decisions :-

- (i) CIT vs. Sangam Enterprises, 240 ITR 13 (AP).
- (ii) CIT vs. Standard Makings & Allied Products Corpn., 226 ITR 1 (Guj.).

9. The ld. CIT(A) without appreciating proper facts of the case went on to hold that the payment of money to the retiring partner is revenue expenditure. In the circumstances, the findings of the ld.

CIT(A) cannot be accepted in the eyes of law. Therefore, the decision of the ld. CIT(A) is reversed. Thus, the grounds of appeal filed by the Revenue stand allowed.

10. In the result, the appeal filed by the Revenue stands allowed.

Order pronounced on this 10th day of October, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th October, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-8, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.