

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

I.T.A No.31 OF 2015

BETWEEN :

M/s. NITESH ESTATES PRIVATE LIMITED
REP. BY ITS EXECUIVE DIRECTOR,
SRI. L.S. VAIDYANATHAN
#8, NITESH TIMESQUARE
7TH FLOOR, M.G.ROAD
BANGALORE - 560 001

... APPELLANT

(BY SHRI. A. SHANKAR, SENIOR ADVOCATE FOR
SHRI. M. LAVA, ADVOCATE)

AND :

DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 12(2)
#14/3, NRUPATHUNGA ROAD
BANGALORE - 560 001

... RESPONDENT

(BY SHRI. K.V. ARAVIND, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED: 28/08/2014 PASSED IN ITA NO. 804 & 805/BANG/2013, FOR THE ASSESSMENT YEAR 2008-09 AND 2009-10. PRAYING TO FROMULATE THE SUBSTANTIAL QUESTIONS OF LAW AS STATED AND ANSWER THE SAME IN THE FAVOR OF THE APPELLANT. TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN

ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE BENCH IN ITA NOS. 804 & 805/BANG/2013 RELATING TO ASSESSMENT YEARS 2008-09 AND 2009-10 RESPECTIVELY VIDE ITS COMMON ORDER DATED 28/08/2014.

THIS ITA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.06.2022 COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **P.S.DINESh KUMAR J**, PRONOUNCED THE FOLLOWING:-

JUDGMENT

This appeal by the assessee has been admitted to consider following questions of law:

- "1. Whether the Tribunal is correct in law in upholding the disallowance by the assessing officer of compensation paid by the appellant and claimed as business expenditure of Rs. 4,48,69,595/- and Rs. 50,00,884/- for the assessment years 2008-09 and 2009-10 respectively, on the facts and circumstances of the case?*
- 2. Whether the Tribunal was justified in law in holding that there was no nexus between the compensation paid by the appellant and the project under execution even when the assessing officer had accepted the claim of expenditure in the earlier assessment year 2007-08 on the facts and circumstances of the case?*
- 3. Without prejudice, whether the Tribunal was justified in law in not holding that the*

compensation paid by the appellant for the cancellation of the agreement was business expenditure which is otherwise allowable as expenditure under Section 37(1) of the Act on the facts and circumstances of the case?"

2. Brief facts of the case are, appellant is a company engaged in the business of real estate development including execution of Contracts, development and maintenance of buildings. For assessment year 2008-09 and 2009-10, the appellant filed its return of income by declaring a total income of ₹2,72,24,140/- and ₹7,60,68,990/- respectively.

3. The appellant's case was selected for scrutiny by issuance of notices. The Assessing Officer made disallowance of compensation of ₹4,48,69,595/- and ₹50,00,884/- for the assessment year 2008-09 and 2009-10 paid to one Shri Mahesh Bhupathi. Aggrieved by the order passed by the Assessing Officer, the appellant

preferred appeals¹ before the CIT²(Appeals), who vide separate orders dated March 27, 2013, dismissed the appeals. Assessee challenged the said orders before ITAT³ and the same have been dismissed by the impugned common order dated August 28, 2014.

4. Shri. Shankar, learned Senior Advocate submitted that assessee had entered into a Joint Development Agreement⁴ dated September 25, 2004 with one Shri. Mahesh Bhoopathi for development of land measuring 3 acres in Sy. No.1B, Block 30, 31 and 40 in Jakkur Plantation, Bengaluru. Later, assessee found a better business opportunity to develop land measuring about 5 acres and 29 guntas in Sy. No.1B consisting of eight blocks, which belonged to M/s. Sunrise Realty

¹ ITA No. 235/C-12 (2)/CIT (A)- III/ Bang/10-11 and ITA No. 347/C-12(2)/CIT (A)- III/ Bang/2011- 12

² Commissioner of Income Tax

³ Income Tax Appellate Authority, B- Bench, Bengaluru

⁴ 'JDA' for short

and Leisure Pvt. Ltd. Both these properties were in the same vicinity. Assessee entered into an MoU⁵ with M/s. Sunrise Realty, to purchase its land and paid an advance Sale consideration of Rs.One Crore. M/s. ITC Ltd., agreed to purchase the property belonging to M/s. Sunrise Realty. Assessee entered into an MoU dated June 16, 2005 with ITC agreeing to facilitate transfer of property belonging to M/s. Sunrise Realty. In the same MoU, ITC had agreed to award Development and construction Contract to the assessee.

5. Assessee approached Shri. Mahesh Bhoopathi for cancellation of the JDA and the parties agreed that assessee shall pay ₹8.50 Crores as compensation to Shri. Mahesh Bhoopathi.

6. On April 1, 2006, M/s. Sunrise Realty & Leisure Pvt. Ltd. executed a Sale deed in favour of

⁵ Memorandum of Understanding

ITC. ITC entered into a construction agreement with the assessee for development of the said property and the project was named as Nitesh Land Island⁶.

7. Assessee claimed the compensation amount of ₹6.70 Crores which was finally paid to Shri. Mahesh Bhoopathi, as expenditure by debiting the same to the Profit and Loss Account in the same percentage of completion of work. Accordingly, the assessee debited a sum of ₹96,96,744/- for the A.Y. 2007-08. The Assessing Officer has accepted assessee's contention that the said expense had nexus with NLI Project. However, the assessee has disallowed the compensation of ₹4,48,69,595/- for (A.Y. 2008-09) and ₹50,00,884/- for (A.Y. 2009-10) paid to Shri. Mahesh Bhoopathi. In the appeal filed before the CIT (Appeals), Assessing Officer's view has been upheld.

⁶ 'NLI Project' for short

8. In support of these appeals, Shri. Shankar mainly contended that:

- the Assessing Officer has allowed the expenditure for the A.Y. 2007-08;
- the Assessing Officer has not questioned the genuineness of the transactions for the A.Y. 2008-09 and 2009-10;
- assessee initially had entered into a JDA with Shri. Mahesh Bhoopathi. Since a better business opportunity was available to get the construction work in a larger area of 5 acres, assessee decided to cancel the JDA with Shri. Mahesh Bhoopathi. He had initially, demanded ₹8.5 Crores and finally agreed to receive ₹6.7 Crores as compensation.
- assessee had facilitated transfer of land belonging to Sunrise Realty in favour of ITC

and Shri. Mahesh Bhoopathi's land in favour of Sunrise Realty.

9. In substance, Shri. Shankar submitted that assessee had taken decision to cancel the JDA with Shri. Mahesh Bhoopathi as the assessee got a better business opportunity and paid compensation to Shri. Mahesh Bhoopathi to get the agreement cancelled.

10. Opposing the appeal, Shri. K.V. Aravind submitted that:

- The transactions between Sunrise Realty and ITC have no nexus with the payment of compensation to Shri. Mahesh Bhoopathi;
- assessee has obtained the construction Contract from ITC. Even this transaction has no nexus with the JDA between assessee and Shri. Mahesh Bhoopathi;

- even if it is construed that both transactions have some nexus, the sale of Shri. Mahesh Bhoopathi's property is not in favour of Sunrise Realty, but in favour of an individual;
- the Sale deeds executed either by Sunrise Realty or Shri. Mahesh Bhoopathi do not contain any condition that the Construction Contract shall be awarded to the assessee;
- all three Authorities have recorded concurrent findings of facts; and
- the Authorities cited by Shri. Shankar are all with reference to the facts of those respective cases and not applicable to this case.

11. We have carefully considered rival contentions and perused the records.

12. All three questions of law framed by this Court hinge around the fact whether there was nexus between the compensation paid by the assessee to Shri. Mahesh Bhoopathi with the 'NLI project'.

13. Undisputed facts are, assessee had entered into JDA with Shri. Mahesh Bhoopathi. On July 14, 2005, parties entered into a compensation agreement whereunder, assessee agreed to pay a sum of ₹8.50 Crores to Shri. Mahesh Bhoopathi, which was subsequently reduced to ₹6.70 Crores towards cancellation of the JDA. Perusal of the Compensation agreement shows that both Shri. Mahesh Bhoopathi and the assessee had approached ITC for participation in the project. The ITC had identified certain other immovable property to construction multi-storied residential complex.

The relevant clause in the agreement reads as follows:

"C. The Parties have been approached by ITC Limited ("ITC") for participation in a project involving the development of land and construction of a residential complex for their use. The Schedule Property being insufficient, ITC has identified certain other immovable property adjacent to the Schedule Property, for developing and constructing thereon a multistoried residential complex. ("Project");"

14. Under the Sale deed dated April 1, 2006, Sunrise Realty has sold 5 acres 27.4 guntas in favour of ITC. In the said Sale deed, assessee is first confirming party. On the same day, a construction agreement has been entered into between assessee and ITC Ltd., in respect of the very same land.

15. For the A.Y. 2007-08, the assessee has deducted a sum of ₹96,76,744/-, as expenditure

out of the compensation amount paid to Shri. Mahesh Bhoopathi and the same has been accepted by the Assessing Authority. For the subsequent two years, which are under consideration in this appeal, the Revenue has disallowed the expenditure.

16. Shri. Shankar has placed reliance on *S.A. Builders Ltd. v. CIT*⁷. In that case, the assessee had advanced interest-free loan to its subsidiary Company. The Assessing Officer disallowed the proportionate interest relating to the said amount. The CIT (Appeals) accepted partial claim. Cross-appeals were filed before ITAT and the Tribunal allowed Revenue's appeal. On further appeal, the High Court upheld Tribunal's order. The Hon'ble Supreme Court of India, held that the money can be said to be advanced to a sister

⁷ (2007) 288 ITR 1 (SC) (para 34)

concern for commercial expediency in many circumstances.

17. In *CIT Vs. Dalmia Cement (Bharat) Ltd.*⁸, it is held that once it is established that there is nexus between the expenditure and the purpose of business, the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise its profit. The tax authorities must not look at the matter from their viewpoint but that of a prudent businessman.

⁸ (2002)254 ITR 377

18. Thus, what is required to be examined is, whether there was nexus between the compensation paid to Shri. Mahesh Bhoopathi and the construction agreement. The answer must be in the affirmative firstly, because, in para 3 of the JDA cancellation agreement, it is stated that M/s. ITC had approached the parties to the said cancellation agreement. Thus, assessee, Shri.Mahesh Bhoopathi and ITC were considering the proposal for construction of multi-storied residential Complex. Secondly because, in the Sale deed dated April 1, 2006 executed by Sunrise Realty, assessee is one of the confirming parties. Thirdly, because, the Construction Agreement has been entered into between ITC and the assessee on April 1, 2006, and on the very same day, Sunrise Realty has sold the property to M/s. ITC Ltd. Unless the Construction Agreement was finalized earlier, it would not have been possible to execute the same on the date of

purchase of the property. Fourthly because, Shri. Mahesh Bhoopathi had sold his property, which was subject matter of JDA in favour of Sunrise Realty. Shri. Aravind contended that the sale is in the name of individual in the name of Shri. Raghunath Vishwanath Deshpande. Shri. Shankar's reply to this contention is, Sunrise Realty was owned by Deshpande family. Further, fifthly because, the Revenue has allowed the expenditure for the A.Y. 2007-08.

19. In view of the above, we are of the considered view that there was nexus between the cancellation of JDA and execution of Construction Agreement. Hence, following the authority in *S.A. Builders*, we are of the view that this appeal merits consideration and it is accordingly **allowed**.

20. The questions framed by this Court are answered in favour of assessee and against the Revenue.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS