

UJWAL FINE HOMES vs. DEPUTY COMMISSIONER OF INCOME TAX

IN THE ITAT PUNE BENCH 'B'

R. S. SYAL, VP & S.S. VISWANETHRA RAVI, JM.

ITA No. 1247/PUN/2017

Aug 6, 2021

(2021) 62 CCH 0387 PuneTrib

Legislation Referred to

Section 38(2)

Case pertains to

Asst. Year 2013-14

Decision in favour of:

Assessee (partly)

Depreciation—Depreciation on cars— Assessee firm purchased two motor cars on which depreciation was claimed — Assessee in computation of income suo motu disallowed a sum towards personal expenses on use of car — AO observed that assessee did not make any disallowance of depreciation on account of personal use of vehicles —AO disallowed 20% of depreciation on these two cars — CIT(A) sustained addition — Held, there is no dispute on fact that assessee did use vehicles for personal purpose which is evident from fact that sum from travelling and conveyance expenses was voluntarily disallowed by assessee — Section 38(2) provides for making disallowance, inter alia, of depreciation on account of non business use also — In principle, that AO was justified in making disallowance of depreciation on motor cars purchased during year — However, considering entire facts and circumstances it would be reasonable to restrict disallowance at 10% of depreciation instead of 20% — Assessee's ground partly allowed.

Held

There is no dispute on fact that the assessee did use the vehicles for personal purpose which is evident from the fact that sum from travelling and conveyance expenses was voluntarily disallowed by the assessee. Section 38(2) provides for making disallowance, inter alia, of

depreciation on account of non business use also. In principle, that the AO was justified in making disallowance of depreciation on motor cars purchased during the year. However, considering the entire facts and circumstances it would be reasonable to restrict the disallowance at 10% of depreciation instead of 20%. Assessee's ground partly allowed.

(para 3)

In favour of

Assessee(partly)

Deductions— Construction cost of non-80IB project — Assessee undertook two projects H and G — H project was enjoying benefit of deduction u/s 80IB(10) — Assessee declared profit from H project entitled to 80IB deduction and from G, a non-80IB project — AO observed that assessee had shown huge profit in 80IB project at around 60% as against around 7% in non-80IB project — AO observed that there could be no difference in cost of construction in both projects differential amount was multiplied with area constructed to work out addition — CIT(A) sustained addition — Held, AO accepted assessee's contention towards more profit in eligible unit arising on account of difference in land cost and difference in sale rate per sq.ft —AO focused addition only towards difference in cost of construction per sq.ft — Whereas eligible 80IB unit carried cost of construction at Rs.1483/- per sq.ft and non-eligible unit carried cost of construction at R.1,531/- per sq.ft — There is difference of just R.48/- per sq.ft., which is only 3.23% — There can be several reasons for such a nominal increase in cost of construction depending upon quality of construction etc — AO has not pointed out any defect in details furnished by assessee showing construction cost per sq.ft. computed in Gold Ember project at Rs.1531/- per sq.ft — Neither books of account have been rejected — A simple plus and minus mechanism has been followed for sustaining addition —T his type of exercise for making and sustaining addition cannot be countenanced in view of fact that assessee furnished all necessary details towards costs incurred in eligible as well as non-eligible projects, which were not faulted with and further AO did not reject books of account by pointing out any mistake therein —N o addition is called for on this score —A ddition is hereby deleted —Assessee's ground allowed

Held

AO accepted assessee's contention towards more profit in the eligible unit arising on account of difference in land cost and difference in sale rate per sq.ft. He focused the addition only towards the difference in cost of construction per sq.ft. Whereas the eligible 80IB unit carried cost of construction at Rs.1483/- per sq.ft and non-eligible unit carried cost of construction at R.1,531/- per sq.ft. There is difference of just R.48/- per sq.ft., which is only 3.23%. There can be several reasons for such a nominal increase in the cost of construction depending upon the quality of construction etc. The AO has not pointed out any defect in the details furnished by the assessee showing the construction cost per sq.ft. computed in Gold Ember project at Rs.1531/- per sq.ft. Neither the books of account have been rejected. A simple plus and

minus mechanism has been followed for sustaining the addition of Rs.21,15,552/-. This type of exercise for making and sustaining the addition cannot be countenanced in view of the fact that the assessee furnished all the necessary details towards costs incurred in the eligible as well as non-eligible projects, which were not faulted with and further the AO did not reject the books of account by pointing out any mistake therein. No addition is called for on this score. The addition is hereby deleted.

(para 4)

In favour of

Assessee

Business expenditure— Addition towards loss on account of embezzlement — Assessee debited a sum to its Profit and Loss Account towards loss due to embezzlement — On being called upon to furnish details of parties from whom cash was collected which was claimed to have been embezzled by S assessee submitted certain details — AO made addition for said amount on ground that assessee could not produce Sand that his whereabouts were also not given — CIT(A) affirmed addition — Held, S collected amounts but did not give back to assessee firm — A assessee lodged a police complaint in this regard — A mounts so collected and embezzled by S have been credited to respective parties' accounts with debit to loss on embezzlement account — Before such entries, assessee debited full amount of sales including amount embezzled to accounts of respective parties accounts, which was credited to Sales account — It means that amount embezzled by S has been accounted for in figure of Sales offered by assessee and since amount was embezzled, assessee claimed a deduction for same — On a specific query, AR submitted that whereabouts of S were not known as he left place and there is no further information about him — On question of status of police complaint, AR submitted that nothing has transpired so far towards recovery of any amount — These facts indicate that amount embezzled by S has become irrecoverable and same should be allowed as deduction — Impugned order is overturned and deduction for amount embezzled is granted — Assessee's ground allowed.

Held

S collected the amounts but did not give back to the assessee firm. The assessee lodged a police complaint in this regard. The amounts so collected and embezzled by Shri Rahul Kulkarni have been credited to the respective parties' accounts with the debit to loss on embezzlement account. Before such entries, the assessee debited full amount of sales including the amount embezzled to the accounts of respective parties accounts, which was credited to the Sales account. It means that the amount embezzled by Shri Rahul Kulkarni has been accounted for in the figure of Sales offered by the assessee and since the amount was embezzled, the assessee claimed a deduction for the same. On a specific query, the AR submitted that whereabouts of Shri Rahul Kulkarni were not known as he left the place and there is no further information about him. On the question of status of the police complaint,

the AR submitted that nothing has transpired so far towards recovery of any amount. These facts indicate that the amount embezzled by Shri Rahul Kulkarni has become irrecoverable and the same should be allowed as deduction. Impugned order is overturned and deduction for the amount embezzled is granted. Assessee's ground allowed.

(para 7)

In favour of

Assessee

Counsel appeared:

Shekhar Naniwadekar for the Assessee.: S.P. Walimbe for the Revenue

R. S. SYAL, VP.

1. This appeal by the assessee is directed against the order passed by the CIT(A)-4, Pune on 02-01-2017 in relation to the assessment year 2013-14.

2. The first issue is against the disallowance of depreciation on cars for personal use. Briefly stated, the facts of the case are that the assessee firm purchased two motor cars during the year for Rs.55,52,364/- and Rs.58,03,706/- respectively on which depreciation of Rs.21,17,839/- was claimed. The assessee in the computation of income suo motu disallowed a sum of Rs.50,000/- towards personal expenses on the use of car. The AO observed that the assessee did not make any disallowance of depreciation on account of personal use of vehicles. He, therefore, disallowed 20% of depreciation on these two cars amounting to Rs.4,23,567/-. The Id. CIT(A) sustained the addition, against which the assessee has come up in appeal before the Tribunal.

3. Having heard both the sides through Virtual Court and gone through the relevant material on record, it is seen that the assessee is a partnership firm. There is no dispute on the fact that the assessee did use the vehicles for personal purpose which is evident from the fact that a sum of Rs.50,000/- from travelling and conveyance expenses was voluntarily disallowed by the assessee. Section 38(2) of the Income-tax Act, 1961 (hereinafter called the Act) clearly provides for making disallowance, inter alia, of depreciation on account of non business use also. We, therefore, hold, in principle, that the AO was justified in making disallowance of depreciation on motor cars purchased during the year. However, considering the entire facts and circumstances of the case prevailing in the instant case, we are satisfied that it would be reasonable to restrict the disallowance at 10% of depreciation instead of 20%, which will be in addition to the disallowance of Rs.50,000/- offered by the assessee itself. This ground is, thus, partly allowed.

4. The next issue raised by the assessee is against the addition of Rs.21,15,552/- on account of construction cost of non-80IB project. The factual matrix of this ground is that the assessee undertook two projects, namely, Hi Bliss and Gold Ember. Hi Bliss project was enjoying the benefit of deduction u/s 80IB(10) of the Act. The assessee declared profit at 59.55% from Hi Bliss project entitled to 80IB deduction and 7.29% from Gold Ember, a non-80IB project. The AO observed that the assessee had shown huge profit in 80IB project at around 60% as against around 7% in non-80IB project. On being called upon to explain the reasons for such a huge variation in the profit rates, the assessee made three broader submissions, namely, Difference in land cost; Difference in sale rate per sq.ft.; and Difference in cost of construction. The AO accepted the assessee's contention regarding difference in land cost and difference in sale rate per sq.ft. He, however, observed that there could be no difference in the cost of

construction per sq.ft. in both the projects. It was thus found that the assessee showed cost of construction excluding the land cost under Hi Bliss project at Rs.1483/- per sq.ft. whereas similar cost per sq.ft. in Gold Ember was Rs.1531/- per sq.ft. The differential amount of Rs.48/-, i.e. 3.23% was multiplied with the area constructed at 44071 sq.ft. to work out the addition of Rs.21,15,552/-. The Id. CIT(A) sustained the addition against which the assessee has come up in appeal before the Tribunal. 5. Having heard both the sides and gone through the relevant material on record, it is seen that the AO accepted the assessee's contention towards more profit in the eligible unit arising on account of difference in land cost and difference in sale rate per sq.ft. He focused the addition only towards the difference in cost of construction per sq.ft. Whereas the eligible 80IB unit carried cost of construction at Rs.1483/- per sq.ft and non-eligible unit carried cost of construction at Rs.1,531/- per sq.ft. There is difference of just Rs.48/- per sq.ft., which is only 3.23%. There can be several reasons for such a nominal increase in the cost of construction depending upon the quality of construction etc. The AO has not pointed out any defect in the details furnished by the assessee showing the construction cost per sq.ft. computed in Gold Ember project at Rs.1531/- per sq.ft. Neither the books of account have been rejected. A simple plus and minus mechanism has been followed for sustaining the addition of Rs.21,15,552/-. In our considered opinion, this type of exercise for making and sustaining the addition cannot be countenanced in view of the fact that the assessee furnished all the necessary details towards costs incurred in the eligible as well as non-eligible projects, which were not faulted with and further the AO did not reject the books of account by pointing out any mistake therein. We are of the considered opinion that no addition is called for on this score. The addition is hereby deleted. 6. The last issue raised in this appeal is against the confirmation of addition of Rs.30,77,616/- towards loss on account of embezzlement. The factual matrix of this ground is that the assessee debited a sum of Rs.30.77 lakh to its Profit and Loss Account towards loss due to embezzlement. On being called upon to furnish the details of the parties from whom the cash was collected which was claimed to have been embezzled by Shri Rahul Kulkarni, the assessee submitted certain details by putting forth that Shri Rahul Kulkarni was working as Marketing Officer for last three years. He collected cash from various customers but did not give it back fully to the assessee-firm. A photocopy of letter dated 14.03.2013 filed with the Police Inspector, Haveli Police Station in this regard was also filed. The assessee also furnished a photocopy of confirmation from Shri Rahul Kulkarni showing cash collected from the customers, which was not deposited with the assessee firm. A total sum of Rs.49,15,456 was collected by Shri Rahul Kulkarni, out of which sum of Rs.2,98,700 lakh was recovered from the contractor and sum of Rs.15,39,140 was recovered from Shri Rahul Kulkarni, leaving balance of Rs.30.77 lakh that was claimed by the assessee as deduction. The AO made addition for the said amount on the ground that the assessee could not produce Shri Rahul Kulkarni and that his whereabouts were also not given. The Id. CIT(A) affirmed the addition.

7. We have heard both the sides. Page 84 of paper book is a signed statement of Shri Rahul Kulkarni admitting receipt of cash from certain customers, which was not handed over to the assessee firm. Page 105 is an account of stamp duty etc. collected by Shri Rahul Kulkarni which was also not handed over to the firm. This statement is also duly signed by him admitting that he collected the cash to that extent but did not pass it over to the assessee. Thus, it is evident that Sh. Rahul Kulkarni collected the amounts but did not give back to the assessee firm. The assessee lodged a police complaint in this regard and a copy of police complaint has also been placed on record. Our attention was also drawn towards accounts of the parties from whom cash was collected by Shri Rahul Kulkarni. The amounts so collected and embezzled by Shri Rahul Kulkarni have been credited to the respective parties' accounts with the debit to loss on embezzlement account. Before such entries, the assessee debited full amount of sales including the amount embezzled to the accounts of respective parties accounts, which was credited to the Sales account. It means that the amount embezzled by Shri Rahul Kulkarni has been accounted for in the figure of Sales offered by the assessee and since the amount was embezzled, the assessee claimed a deduction for the same. On a specific query, the Id. AR submitted that whereabouts of Shri Rahul Kulkarni were not known as he left the place and there is no further information about him. On the question of status of the police complaint, the Id. AR submitted that nothing has transpired so far towards recovery of any amount. These facts indicate that the amount embezzled by Shri Rahul

Kulkarni has become irrecoverable and the same should be allowed as deduction. We, therefore, overturn the impugned order and grant deduction for the amount embezzled. It is clarified that as and when the recovery is made from Shri Rahul Kulkarni, the same should be offered for taxation. 8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 6th August, 2021.

Customized Notes

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