

(2024) 04 ITAT CK 0010

Income Tax Appellate Tribunal (Delhi A Bench)

Case No: Income Tax Appeal No. 6220/DEL/2017

Dy. C.I.T.

APPELLANT

Vs

M/S ATNT Infrastructure Services
Pvt Ltd

RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 69, 145(3)

Hon'ble Judges: Saktijit Dey, (VP); N.K. Billaiya, (AM)

Bench: Division Bench

Advocate: Harpreet Singh Ajmani, Kanv Bali

Final Decision: Dismissed

Judgement

1. This appeal by the Revenue is preferred against the order of the Id. CIT(A) - 1 New Delhi, dated 20.07.2017 pertaining to A.Y. 2013-14.

2. The grievances of the Revenue read as under:

"1. The Ld. CIT(A) has erred in law and on facts in holding in the beginning of his order that the addition made of Rs.2,98,61,649/- was not justified without appreciating the complete facts of the case particularly that these additions consisted of several items of addition and disallowances which have been discussed separately in the assessment order.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in accepting the books of account of the assessee, rejected by the AO u/s 145(3) of Income-tax Act, 1961 without appreciating the relevant facts brought on record by the AO in para 4.2 of the assessment order.

3. (i). The Ld. CIT(A) has erred in law and on facts in holding that the AO erred in taking market price of construction as notional rental income instead of actual cost of construction without appreciating the facts brought on record by AO in this regard.

(ii). The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,65,39,595/- made by the AO on account of unexplained investment u/s 69 of the Income-tax Act, 1961 in the construction of building without appreciating the facts brought on record by AO.

4. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs. 33,41,966/- made by the AO on account of notional rental income.

5. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.74,74,102/- made by the AO on account of unexplained cash credit without appreciating the facts brought by the AO..

6. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 30.09.2013 declaring loss of Rs. 2,20,09,147/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. Returned loss of the assessee was assessed at an income of Rs. 78,76,448/- after making addition of Rs. 2,98,85,595/- consisting of several items of additions and disallowances. One item of this addition is addition of Rs. 1,65,39,595/- on account of unexplained investment.

5. We find that the Assessing Officer has made the addition on the basis of market price of the land and building whereas the assessee has declared the value of these assets as per cost incurred by it when the land was purchased in F.Y. 2010-11.

6. The basis of the addition is the valuation report submitted by the assessee during the course of assessment proceedings which was based on the market value of land and building as on the date of valuation. In our considered opinion, purchase price declared by the assessee is the cost incurred by the assessee and, therefore, the Assessing Officer grossly erred in taking market value of the assets from the valuation report. We do not find any reason to interfere with the findings of the Id. CIT(A). Ground stands dismissed.

7. Second item is the addition of Rs. 33,41,966/- being addition on account of notional rental value.

8. The underlying facts in this issue are that the assessee has constructed a building for school on the leasehold institutional plot of Noida Authority. In the sub-lease deed, it is mentioned that monthly lease rental shall be 8% per annum on total investment made by the assessee on construction of second building which included all fixtures and other assets in proportion to the area handed over.

9. The assessee has returned rental income as per this sub-lease deed. However, when the valuation report was submitted during the assessment proceedings, the Assessing Officer found that market value of the constructed property is far more than what has been stated by the assessee and taking 8% as annual rental value as per the agreement, the Assessing Officer made addition of Rs. 33,41,966/-.

10. On considering the actual factual matrix, we find that the assessee has computed its rental income as agreed with the lessee and annual lettable value is also justified using average rent charged in nearby area at Noida. We, therefore, do not find any merit in taking notional rental value on the fair market value of the constructed property. The assessee has accordingly shown 8% rental income in the investment shown in the books of account. We, therefore, decline to interfere with the findings of the Id. CIT(A).

11. Next item of addition is of Rs. 74,74,102/- being addition on account of sundry creditors.

12. As mentioned elsewhere, the only income of the assessee is income from house property. Therefore, there is no question of any sundry creditors/payables. Moreover, the assessee has not claimed any expenditure. Therefore, there is no question of disallowance of any expenditure. We do not find any error or infirmity in the findings of the Id. CIT(A).

13. In the result, the appeal of the Revenue in ITA No. 6220/DEL/2017 is dismissed.