

(2024) 05 ITAT CK 0057

Income Tax Appellate Tribunal (Delhi F Bench)**Case No:** Income Tax Appeal No. 683/DEL/2018

DCIT

APPELLANT

Vs

Ramprastha Properties Pvt. Ltd

RESPONDENT

Date of Decision: May 30, 2024**Hon'ble Judges:** G.S. Pannu, (VP); Anubhav Sharma, J**Bench:** Division Bench**Advocate:** Sanjay Kumar, Shubham Shanakar Gogoi, Vivek Vardhan**Final Decision:** Dismissed

Judgement

1. This appeal filed by the Revenue is against the order dated 27.10.2017 passed by the Ld. CIT(A)-38, New Delhi in the case of M/s Ramprastha Properties Pvt. Ltd. for the Assessment Year ('the AY' henceforth) 2014-15.

2. The assessee; M/s Ramprastha Properties Pvt. Ltd., engaged in the real estate business, filed its original Income Tax Return ('the ITR' henceforth) declaring income of Rs.1,79,46,941/- on 30.09.2014. The ITR was subsequently revised, showing loss of Rs.23,95,186/-, on 24.11.2015. The assessee; M/s Ramprastha Properties Pvt. Ltd.'s three sister concerns; namely, M/s Ramprastha Developers (P) Ltd., M/s Ramprastha Builders (P) Ltd, and M/s Ramprastha Estates (P) Ltd. advanced interest free loan/sum of Rs.30,92,25,804/- to it for purchasing land, as per agreement in this regard, in the year 2007. As per Agreement(s) entered between the above mentioned three financiers/investors and M/s Ramprastha Properties Pvt. Ltd., the above mentioned three concerns retained the developments & constructions of/over the land and selling rights on such lands. Basically, the assessee; M/s Ramprastha Properties Pvt. Ltd. acted as aggregator of lands on behalf of the above mentioned three financier/investor concerns. The land acquired from the funds invested by the above mentioned three sister concerns was compulsorily acquired by the Haryana Urban Development

Authority ('the HUDA' henceforth) in the preceding year and the compensation of Rs.4,00,33,028/- in lieu thereof was received in three tranches; two in November 2013 and one in March 2014 (The photocopies of the pay orders issued by the Land Acquisition Collector, Urban Estate, Haryana was filed before us.). Further, the enhanced compensation of Rs.8,69,69,677/-, on such acquisition by the HUDA, was received subsequently in the AY 2015-16. In the original ITR, the assessee; M/s Ramprastha Properties Pvt. Ltd. has not claimed any expense/deduction payable to the above mentioned three investor companies out of the compensation of Rs.4,00,33,028/- income shown in the P & L account. However, the payment of Rs.2,19,42,019/- had been claimed as expenses payable to the above mentioned three sister concern/financer/ investor companies as per the terms & agreements. Due to the claim of expenses of Rs.2,19,42,019/- by the assessee; Ramprastha Properties Pvt. Ltd. in its revised ITR, the income of Rs.1,79,46,941/- shown in the original ITR was revised to the loss of Rs.23,95,186/- in the revised ITR.

2.1 The Assessing Officer ('the AO' henceforth), based on the detailed reasoning mentioned in the assessment order, did not allow the claim of expenses of Rs.2,19,42,019/- in the revised ITR and therefore, assessed the income at Rs.1,95,46,833/-. The AO was of view that as assessee is an owner of land, the compensation should be taxed in hand of the assessee. Aggrieved, the assessee; M/s Ramprastha Properties Pvt. Ltd. preferred appeal before the CIT(A), who allowed the appeal. On the basis that the investor companies have shown the compensation received from assessee as income and accrued in P&L account, the issue is revenue neutral.

2.2 The Revenue, vide impugned appeal, challenged the deletion of disallowance of expenses of Rs.2,19,42,019/- by raising following grounds :-

“1. On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the disallowance of Rs. 2,19,42,019/- as expenditure being amount payable to investor companies ignoring the fact that the amount is only the application of income already accrued and not diversion by overriding title.

2. On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law in deleting the disallowance of Rs. 2,19,42,019/- ignoring the vital decision of hon'ble Supreme Court in the case of CIT vs. Sitaldas Tirathdas {(1961) 41 ITR 367} on identical issue.

3. The appellant craves to be allowed to add any fresh grounds of appeal and / or delete or mend any of the grounds of appeal.”

3. We have heard both the parties. The Ld. Sr. DR placing reliance on the decision of the Hon'ble Supreme Court in the case of Sital Das Tirath Das 41 ITR 367, emphasized on the facts and details mentioned in the assessment order. It was contended on the basis of the relevant clauses of the agreement dated 24.04.2006 between assessee and other party, other party has made a return of investment.

3.1 The Ld. AR while arguing the case submitted that the expenses of Rs.2,19,42,019/- which disallowed by the AO had been offered as income, in aggregate, by the above mentioned three concerns; namely, M/s Ramprastha Developers (P) Ltd., M/s Ramprastha Builders (P) Ltd, and M/s Ramprastha Estates (P) Ltd. in the relevant AY and therefore, it is revenue neutral as far as the Group is concerned. Therefore, it is not a case of tax evasion. It was contended that it is a case of diversion of income and not application of income.

4. We have considered the rival submissions made by both the sides and perused the record and orders of the authorities below. We have considered the above mentioned decisions relied upon by the rival parties. The moot question here is that whether the expenditure payable of Rs.2,19,42,019/- to the above mentioned three sister concerns of the assessee; M/s Ramprastha Properties Pvt. Ltd. claimed in the revised ITR is an allowable expenditure or not. The AO has held that this expenditure is an application of income instead of a charge to the income whereas the assessee's claim is otherwise. We find merit in the finding of the CIT(A) that the expenditure payable of Rs.2,19,42,019/- claimed in the revised ITR is in the nature of charge to the income as the same has to be paid to the investor companies as per the terms & agreements entered between the two parties; investors and the assessee on the simple logic that no prudent businessman will invest any sum/money with any person without safeguarding his/her interest and income in return thereof. The payment made to three sister concern was not out of own discretion exercised in favour of these sister concern but one made due to obligation arising out of agreement.

5. It is a settled proposition of law that if there is an obligation before an income accrues and the assessee is under compulsion to discharge his obligation, it would be a case of diversion by superior title but, where there is no compulsion and no pre-existing obligation, but it is assessee's choice to create an obligation on himself either before income is received, accrues or arisen or thereafter, it would only be a case of application of income. Reliance can be placed for said proposition on Co-ordinate Bench order in the case of ACIT Vs. Emaar MGF, ITA No. 1735/Del/2016. The Hon'ble Supreme Court judgment, which Id. DR has relied, was in fact propounded this proposition.

6. Further, we also find force in the arguments of the Ld. AR that the claim of expenditure of Rs.2,19,42,019/- to the above mentioned three sister concerns of the

assessee is revenue neutral as far as the Group is concerned because one of the Group Entities; M/s Ramprastha Properties Pvt. Ltd. has claimed the sum of Rs.2,19,42,019/- as business expenditure and the recipients of that sum which are also the Group companies/sister concerns have offered it, in aggregate, as income. Ld. CIT(A) was correct to hold that adding it in hands of assessee will make it case of double addition. Thus, we hold that the expenditure of Rs.2,19,42,019/- claimed as business expenditure by the assessee is justified. Accordingly, we do not find any merit in the grounds. The appeal of revenue is dismissed.

7. In the result, the revenue appeal stands dismissed.