
(2016) 04 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : C2A No. 19 of 2007 and MP No. 25 of 2007

Dadeechi Dharam Pal Pvt. Ltd.

APPELLANT

Vs

Income Tax Appellate Tribunal

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Income Tax Act, 1961 — Section 144, Section 260A

Citation : (2016) 4 JKJ 337

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. B.S. Walia, J.

Bench : Division Bench

Advocate : Mr. V.B. Gupta, Advocate, for the Appellant/Petitioner; Ms. Aruna Thakur, Advocate, for the Respondents

Final Decision : Disposed off

Judgement

Per Walia B.S., J. - Instant 2nd appeal u/s 260-A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against order dated

30.04.2007 in ITA Nos. 518 to 520 (ASR)/1998 in appeal case titled as M/s Dadeechi Dharam Pal Pvt. Ltd. v. A.C.I.T. to the extent the

Tribunal imposed disallowance @25% on the appellant company for incurring expenditure for development charges for the assessment years

1985-86, 1986-87 and 1987-88, raises the following substantial questions of law:-

When once the appellate Court below came to the conclusion that the 'disallowance' slapped by the Assessing Authority was arbitrary and was

based on no evidence and the evidence referred to and the conclusion reached at by the Assessing Officer was not correct and the same was set

aside was it legal for the Hon'ble Tribunal below to slap the 'Disallowance' at the rate of 25% on the basis of same evidence and on the basis of

same facts and circumstances of the case?

2. Prayer is for setting aside the impugned order to the extent it imposes disallowance @ 25% on the appellant company as also for grant of any

additional/ alternate relief to which the appellant is found entitled to.

3. Brief facts of the case leading to the filing of the instant appeal are that the appellant/firm filed three separate appeals before respondent No. 1

for the assessment years 1985-86, 1986-87 and 1987-88 challenging the order of the CIT (A), Jammu qua order of the Assessing Officer

whereby instead of claim of Rs. 6,76,975/-, Rs.4,28,147/- & Rs. 3,36,744/- respectively for the assessment years 1985-86, 1986-87 and 1987-

88, the Assessing Officer i.e. respondent No. 3 had allowed only Rs. 1,00,000/-, Rs. 70,000/- & Rs. 50,000/-respectively on account of

development charges. It would be appropriate to take note of the fact that the Assessee had filed return of income declaring income of Rs. 9,088/-

, Rs. 10,800/- and Rs. 9,990 for the assessment years 1985-86, 1986-87 and 1987-88 respectively. The Assessee had derived income from

purchase and sale of plots for residential and commercial purposes. The returns filed by the Assessee were accepted u/s 143(1). Subsequently, in

view of complaint by the plot holders of Model Town Colony addressed to the Chairman, C.B.D.T. New Delhi with copy to the A.O. alleging that

no expenses on development had been incurred, besides a suit having been filed by the Association against the assessee in the Court of the Sub-

Judge, Jammu, the A.O. deputed an Inspector to make on spot verification with regard to incurring of expenditure on development charges by the

Assessee. The Inspector reported that some roads had been built but no pucca drains had been laid out, plots were low lying and unlevelled.

Besides no improvement of plots had been done by levelling the plots,

4. That it also needs mention that on the other hand, in the returns filed for the assessment years 1985-86, 1986-87 and 1987-88, the Assessee

had shown development expenses amounting to Rs. 7,76,975/-, Rs. 4,98,147/- and Rs. 3,86,443/- respectively. In the circumstances, the A.O.

formed an opinion that income chargeable to tax had escaped assessment on account of bogus development expenses having been claimed. A.O.,

therefore, initiated reassessment proceedings by issuance of notice u/s 148 for various assessment years. Despite several opportunities, the

Assessee failed to make any representation thereupon the A.O. disallowed the entire development expenses at the time of completing the first reassessment u/s 144 of the Act on 29.03.1993.

5. Aggrieved against the aforementioned orders of the A.O., dated 29.03.1993, on first reassessment u/s 144 of the Act, the assessee filed

appeals before the CIT (A). Taking note of the submissions on behalf of the assessee that the details of development expenses could not be

furnished to the A.O. because the Assessee was not in a position to do so, that all the vouchers for payments made for purposes of development

expenses were available and would be produced before the A.O., the allegation of the revenue that no expenditure was incurred was not correct,

some of the; payments had been made by cheques thus the additions had been made by the A.O. in an arbitrary manner, the CIT (A) set aside the

reassessment and ordered reassessment to be made afresh after giving proper opportunity of being heard. The A.O. was also directed to collect all

evidence and details for the development charges incurred by the Assessee'.

6. Pursuant to the order of the CIT (A), A.O. took up the set aside assessment and gave an opportunity to the assessee to furnish details of

development expenses incurred. The assessee was also asked to furnish the details in respect of persons to whom the development expenses were

shown. A.O. noticed that although the assessee had furnished the details of development charges paid yet the complete postal addresses, identity

of the persons to whom development expenses had been shown as payable were not furnished. Since the postal addresses of the persons to whom

the development expenses had been shown as having been paid were not available, A.O. found it difficult to verify the genuineness of the same.

7. In the circumstances, A.O. observed that it was the plea of the assessee before the CIT (A) that part of the development expenses had been

capitalized but when the assessee was asked to furnish details of such expenses he could not do so. Therefore, the A.O. estimated the

development expenses incurred at Rs. 1,00,000/-, Rs. 70,000/- & Rs. 50,000/ respectively for the assessment years 1985-86, 1986-87 and

1987-88 respectively and allowed the same. However, A.O. disallowed the remaining development charges of Rs. 6,76,575/-, Rs. 4,28,147/- &

3,36,444/- respectively.

8. Aggrieved against the order of the A.O. based on initiation of reassessment proceedings by issuance of notices u/s 148, the Assessee filed an appeal before CIT (A) wherein it submitted that the matter was more than a decade and half old, assessee had genuine difficulty in locating the persons to whom development charges were shown payable for the relevant period, the assessee had requested for physical inspection of the place to ascertain the; extent of metalled roads laid down and other work done in the colony besides the assessee had also sought permission of the learned CIT (A) for admission of additional evidence in the form of Approved Valuer's Report, that the A.O. had relied on Inspector's report but the assessee had never been confronted with the same and on the basis of the same, it was submitted that the action of the A.O. in relying on the report of the Inspector without confronting the assessee with the same violated the Principles of Natural Justice, therefore, the same could not be relied upon. However, the CIT (A) declined to admit the evidence in the shape of Valuation Report on the ground that the same was not produced before the A.O., The CIT (A) observed that the assessee was aware of the Inspector's report and although the matter was old, yet the original reassessments were completed in 1993 but the assessee did not furnish details of expenses and produce the books of account at that stage, that the assessee could have furnished the names and addresses of the persons to whom the development charges were payable in the year 1993 and during the period from 1993 to 1997, the assessee never requested the A.O. to furnish a copy of Inspector's Report and further that at no stage during the first assessment proceedings and the second assessment order, the assessee ever requested the A.O. to inspect the site for verification of the work carried out. In the circumstances, CIT (A) observed that the onus was on the assessee to establish that expenses had been incurred wholly and exclusively for the purpose of its business and that in the absence of documentary evidence linking the expenditure to the development work being furnished by the assessee during the course of set aside assessment proceedings, the disallowance of expenses made by the A.O. was valid.

9. Aggrieved against the order of CIT (A), assessee filed an appeal before the Income Tax Appellate Tribunal, Amritsar i.e. respondent No. 1 and

reiterated the submissions made before the CIT (A). The Tribunal while taking note of the fact that the matter related to the assessment years

1985-86, 1986-87 and 1987-88 and set aside assessment having been completed in the year 1993 and assessee had genuine difficulty in

furnishing the names and addresses of the persons who carried out development work to whom development charges were paid and that the

assessee had submitted before the authorities below that the payments to the contractor had been made by account payee cheques, that the said

fact had not been denied by the revenue and in the circumstances the fact that the assessee could not furnish the names and addresses of the

persons to whom the payments for development charges had been made after lapse of time should not be held entirely against the assessee. Taking

note of the aforementioned aspect of the matter and also that the matter was very old, it was observed that the CIT (A) ought to have admitted

Valuation Report filed during the course of appeal proceedings and then called for remand report from A.O. as to whether the assessee had

actually done the work indicated in the said Valuation Report. Tribunal also took into account that complaint had been made by the plot holders of

Model Town Colony whereas the plots purchased and sold by the assessee were in respect of two colonies i.e. Model Town and Gangyal Garden

for which development charges amounting to Rs. 7,47,996/-and 9,13,469/-respectively for all three assessment years had been claimed and that

there did not appear to be any complaint made by the plot holders of Gangyal Garden. Besides the CIT (A) had directed the A.O. to make proper

enquires before completing the set aside assessments but no such action had been taken by the A.O., Tribunal also took into account that the A.O.

also did not make any enquiry from the Model Town Colony Association as to what happened to the complaint filed before the Courts and as to

whether the charges against the assessee was found to be correct and if so to what extent.

In the circumstances, the Tribunal was pleased to hold the action of the A.O. restricting the deduction to a paltry amount appeared to be without

any basis, excessive and unreasonable but at the same time, the assessee had not been able to furnish complete evidence at the time of first round

of reassessment and also at the time of setting aside assessments. The assessee could not furnish the names and addresses of the persons to whom

payments were also shown outstanding and since the matter was very old and although the original reassessments were restored to the file of the

A.O., no efforts were made by the A.O., therefore, taking into account totality of facts and circumstances of the case and the reasons that even the

Inspector had not denied the fact that development work in the form of metalled roads had been done by the assessee, disallowance was restricted

to 25% of the total expenses claimed instead of adhoc disallowance made by the A.O.. In the circumstances, the consolidated order of the CIT

(A) was set aside, the appeals were partly allowed for all three assessment years and the A.O. was directed to recompute the income by

restricting the disallowance to 25% of the expenses claimed by the assessee.

10. During the course of arguments before this Court, it was submitted that when the Tribunal had come to the conclusion that the findings arrived

at by the Assessing Officer and accepted by the Appellate officers was not based on any legal evidence but on the basis of surmises and

conjectures, then in that situation, the order of the Tribunal imposing disallowance of 25% was unsustainable since the Tribunal had in paragraph

No. 12(2) of the impugned order held that, the assessee had genuine difficulty in furnishing the names and addresses of the persons to whom

amounts had been shown as payable, the Assessee had submitted before the authorities below that the payment to the contractors had been made

by account payee cheques and the said fact had not been denied by the Revenue, therefore, the mere fact that the assessee could not furnish the

names and addresses of the persons to whom payments for development charges had been made after lapse of time could not be held entirely

against the assessee and in the circumstances, CIT (A) ought to have admitted Valuation Report filed during the course of appeal proceedings and

then called for a remand report from A.O. as to whether the assessee had actually done the work indicated in the said Valuation Report, besides

complaint had been made by plot holders of Model Town Colony whereas the plots purchased and sold by the assessee were in respect of two

colonies i.e. Model Town and Gangyal Garden and that no complaint appeared to have been made by the plot holder of Gangyal Garden, CIT (A)

had directed the A.O. to make proper enquiry before completing the set aside assessments but no such action appeared to have been taken by the

A.O. and the A.O. had not enquired from the plot holders of Model Town Colony Association as to what had happened to the complaint filed by

them in the Court and as to whether charges against the assessee were found to be correct or not and if not to what extent.

Besides the action of the A.O. for restricting the deduction to a paltry amount appears to be without any basis, excessive and unreasonable.

11. In the light of aforesaid position, it was contended that once the assessment made by the Assessing Officer as accepted by the CIT (A) had

been rejected by the Tribunal on the ground of same being based on no evidence then in the circumstances, there was no occasion for the Tribunal

to impose 25% disallowance on the basis of the same evidence and set of facts and in the circumstances, the Tribunal ought to have accepted the

details of the expenditure submitted and claimed by the appellant.

12. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and are of the considered view that

when the Tribunal had come to the conclusion that the finding arrived at by the Assessing Officer and accepted by the Appellate Authority were

not based on any legal evidence but on surmises and conjectures as well as on the basis of evidence collected behind the back of the assessee and

without allowing an opportunity of cross examination although no specific request was made before the A.O. during the course of set aside

assessment proceedings, then in the circumstances, there was no occasion for the Tribunal to impose 25% disallowance on the basis of the same

evidence and set of facts. On that ground alone the impugned order (Annexure-A1) dated 30.04.2007 in ITA Nos. 518 to 520 (ASR)/1998 for

the assessment years 1985-86, 1986-87 and 1987-88 is liable to be set aside. However, the plea that the Tribunal ought to have accepted the

details of the expenditure submitted and claimed by the appellant cannot be accepted. Details of expenditure claimed by the appellant can be

accepted only on the basis of evidence. In the circumstances, impugned order (Annexure-A1) dated 30.04.2007 in ITA Nos. 518 to 520

(ASR)/1998 for the assessment years 1985-86, 1986-87 and 1987-88 is set aside and the matter is remanded to the Assessing Authority to

carry out fresh assessment after due compliance with the Principles of Natural Justice and by giving the assessee an opportunity of being heard and

by taking into account the material as is produced by the parties. No orders as to costs.