

Interest paid to prospective buyers on cancellation of plot bookings is allowable as revenue expenditure

Summary – The Delhi ITAT in a recent case of Vatika Town Ships (P.) Ltd., (the Assessee) held that advances returned with interest to prospective buyers upon cancellation of plot bookings was business expenditure.

Facts

- The assessee, a private limited company, was purchasing agricultural land, developing it into saleable plots of farm land and selling them. It received advance against booking of flats from four parties.
- Since said deals could not be materialized they he returned the said sum alongwith interest to the parties and claimed it as compensation allowable as business expenditure.
- The Assessing Officer observed that the assessee had re-purchased the sold plots from the allottees and had paid purchase consideration which had been claimed as compensation. He therefore held that the compensation paid could not be said to be a business expenditure but it was an investment in purchase of plots.
- The Commissioner (Appeals) held that there was no re-purchase of the plots as the plots had never been sold to the said parties in the first place. He held that the advances had been received against the agreement which would have been fulfilled only at the time of full payment and transfer of rights. In earlier years also similar claim was also allowed to the assessee.
- On second appeal.

Held

- Undisputedly, the amounts disbursed by the assessee as compensation expenditure included amounts received as advance towards prospective sale of plots as per the agreements between the assessee-company and the intending purchasers.
- However, these sales could not fructify and the advance amounts, received many years back which were lying with the assessee, were returned by the assessee along with interest thereon in the year under consideration.
- Since full payment in any of these four cases had never been made, the sale never got to be complete and the plots remained in the ownership and possession of the assessee-company without being transferred to the names of the four prospective buyers. It has not been shown otherwise.
- Thus, the conclusion of the Assessing Officer that the amount in question represented sale consideration for re-purchase of the plots by the assessee remains a conclusion unsubstantiated by anything on record. Other than observing that any amount paid for surrender of plots would enhance the stock-in-trade of the assessee by an equivalent amount, the Assessing Officer did not

refer to any other document or circumstance showing that the assessee had, in fact, re-purchased the plots from the allottees and had claimed the purchase consideration as compensation.

- A perusal of the operative portion of the Tribunal's order dated 5-10-2007 shows that indeed the expenditure has been held by the Tribunal to be revenue expense. The objection of the revenue in this regard is, therefore, devoid of merit and is rejected.
- The payment of interest for the amount of advance which kept lying with the assessee for a number of years is entirely justified. The sales may not have fructified for reasons best known to the parties. These reasons may be varied. However, the fact remains that the amount of advance was with the assessee company and once it was decided to be returned, it had, by necessity, to be accompanied with due interest thereon.
- In the present case, the payment was made to compensate the prospective buyers who had booked space, area and land on payment of an advance amount to the assessee-company. These advance amounts were returned along with interest, thereby compensating the customers and the payment or expenditure was incurred for the business purposes of the assessee.
- Pertaining to the issue of consistency, the Commissioner (Appeals) found the amount paid by the assessee have been allowed to the assessee as revenue expenditure in the earlier years.
- The Commissioner (Appeals) further found that in the assessee's books of account, no land stock, *qua* which the assessee claimed to have paid compensation, stood shown as sold.
- Thus, the transaction entered into by the assessee, shown as payment of compensation and claimed as a revenue expenditure, cannot be said to be a mere camouflage or subterfuge designed by the assessee.