

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी" अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 314/Ahd/2016

निर्धारण वर्ष/A.Y. 2011-12

Shri Ashwin Kantilal Rawal, Prop. of Vijay Land Infrastructure, B/h. Samatheshwar Mahadev, Law Garden, Ellisbrdige, Ahmedabad-380006 PAN : AAJPR 8752 R	Vs	Income Tax Officer, Ward 9 (4), Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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By Assessee(s) :	Shri Anil R. Shah & Kinjal Shah, ARs.
By Revenue :	Shri Prasoon Kabra, Sr DR

सुनवाई की तारीख/Date of Hearing : 03/04/2018

घोषणा की तारीख/Date of Pronouncement : 23/04/2018

आदेश/O R D E R

PER S.S. GODARA, JUDICIAL MEMBER :-

This assessee's appeal for assessment year 2011-12 arises against CIT(A), Ahmedabad-5's order dated 16.12.2015 passed in case No.CIT(A)-5/ITO Wd.9(4)/160/2014-15 in proceedings u/s 143(3) of the Income-tax Act, 1961 (in short the "Act").

2. The assessee raises two substantive grounds in the instant appeal. Its first grievance is that the CIT(A) has erred in confirming GP addition of Rs.1,74,945/- @ 28.96% on AUDA and electric connection charges expenses of Rs.6,04,095/- in lower appellate proceedings vide following detailed discussion:-

"4.3. I have considered the facts of the case and submission made by the appellant. The AO has made addition of Rs.6,71,481/- being additional G.P. on construction activity. The AO has observed that in the working of work in progress (WIP) of construction account the assessee has not taken

all the expenditure having a direct bearing on the WIP to arrive at the value of WIP of Bungalows sold by the assessee to his clients. Out of the total direct expenses of Rs.10,72,396/-, the assessee has considered only Rs.5,75,860/- for working of the WIP. As no satisfactory explanation given by the assessee during the course of assessment proceedings the AO has considered the balance amount of direct expenses of Rs.4,96,536/- and amount of electric connection charges of Rs.1,07,559/- for working out WIP. The AO has recalculate the G.P. and made the addition of Rs.6,71,481/-.

4.4. During the course of appellate proceedings the appellant has contended that both AUDA charges of Rs.4,96,536/- and electric connection charges of Rs.1,07,559/- are not forming part of closing balance of WIP of building under construction but the same are expenses which have accrued, ascertain and quantify during the year on the projects which are completed. It is further contended that the assessee is following percentage completion method for revenue recognition and as per this method assessee debits expenses to ongoing projects to WIP and reflected in the balance sheet. The AUDA charges and electric connection charges are already forming part of WIP of earlier years or year to year basis and element of G.P. percentage of WIP of those years is already reflected as income of the respective years.

4.5. The facts of the case and the submissions of the appellant are considered. The finding of the AO is correct that AUDA charges and electricity expenses have a direct bearing on the WIP. The contention of the appellant that these charges have already forming part of WIP of earlier years and G.P. on these have already reflected as income of the respective years is not verifiable. Therefore, the action of the A.O is correct. In the alternative the appellant has contended that there is a mistake in quantifying the amount of the addition at Rs.6,71,481/-. The appellant has contended that the AO has held that the G.P. @28.96% should also be applied to expenses such as AUDA charges of Rs.4,96,436/- and electric connection charges of Rs. 1,07,559/- aggregating to Rs.6,04,095/-. The appellant has submitted that applying G.P @28.96% on the aggregate amount of Rs.6,04,095/- works out to Rs.1,74,945/- and not Rs.6,71,481/- as quantified by the A.O. The appellant has contended that this mistake have crept in because the AO has included G.P. of Rs.4,99,790/-, which is already reflected in profit and loss account while making the addition. The contention of the appellant is found correct as the AO has made double addition of G.P. of Rs.4,99,790/- which is clear from the assessment order itself. Therefore, the AO is directed to restrict the addition to Rs.1,74,945/-. Thus the ground of appeal is partly allowed."

3. Learned authorized representative vehemently contends during the course of hearing that the assessee has himself chosen not to claim the impugned direct expenditure and therefore, both the lower authorities have erred in law as well as on facts in making the impugned addition as reduced to Rs.1,74,945/- in lower appellate proceedings. Learned Departmental Representative strongly supports the impugned addition.

4. We notice in this backdrop of the case that CIT(A) has already accepted assessee's alternative plea of re-quantification of the impugned addition in order to avoid double addition. It has further come on record that learned lower appellate authority has taken into account the relevant figures which already stood added as income in preceding assessment year. It is thus a case of consistency in the impugned assessment year vis-à-vis earlier assessment year qua the very issue. There is no material on record which could rebut this factual position. We therefore find CIT(A)'s approach to be consistent in re-computation of the impugned addition as per the relevant facts in preceding assessment year. The assessee therefore fails in his former substantive ground.

5. We are now left with assessee's latter issue of correctness of section 14A read with rule 89D of disallowance of Rs.1,27,549/- qua its exempt income of Rs.63,889/- .

6. There is no dispute about the fact that both the lower authorities have applied rule 8D whilst computing the impugned disallowance as applicable from assessment year 2008-09 onwards. The hon'ble apex court recent decision in Maxopp Investment Ltd. vs. CIT, [2018] 91 taxmann.com 154 (SC), settles the law that relevant expenditure in case of exempt income has to be apportioned between taxable and non-taxable income.

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The assessee's arguments therefore challenging application of rule 8D in principle in light of section 14A are rejected. Learned counsel thereafter raises alternative plea in view of the hon'ble Delhi high court in the case of Joint Investments Pvt. Ltd vs. CIT that such disallowance cannot exceed the actual exempt income figure. Revenue fails to rebut this legal position. We therefore restrict the impugned disallowance to the extent of exempt income amount of Rs.63,889/- and delete the remaining disallowance component out of Rs.1,27,549/-. Assessee's latter instant substantive ground is therefore partly accepted. This assessee's appeal is partly allowed.

Order pronounced in the Court on 23rd April, 2018 at Ahmedabad

Sd/-

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Ahmedabad; Dated 23/04/2018

Dr

Sd/-

(S.S. GODARA)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad