

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

SHRI Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1060/AHD/2016

निर्धारण वर्ष/Asstt. Year: 2011-2012

Mrs Leelaben V. Savaliya, 42, Keushna Nagar Society, India Colony Road, Bapunagar, Ahmedabad-380 024. PAN: AFUPS6824D	Vs.	A.C.I.T, Circle 11, Ahmedabad.
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(Applicant)	(Respondent)
Assessee by :	Ms Urvashi Sodhan, A.R
Revenue by :	Shri Vinod Tanwani, Sr. D.R

सुनवाई की तारीख/Date of Hearing : 01/05/2019

घोषणा की तारीख /Date of Pronouncement: 15/05/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals), Ahmedabad-5, dated 08/03/2016 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.08/03/2016 relevant to the Assessment Year 2011-2012.

The assessee has raised the following grounds of appeal;

1. *Ld. CIT (A) erred in law and on facts in confirming disallowance made by AO of Rs. 75, 10, 2367- development expenses claimed by the appellant for leveling of uneven land. Ld. CIT (A) ought to have deleted disallowance of genuine expenditure incurred by account payee cheques for making land marketable for sale that fetched handsome profit to the appellant.*
2. *Ld. CIT (A) erred in law and on facts in confirming action of AO rejecting confirmation letters directly & personally submitted to AO on frivolous grounds for treating expenditure as non genuine. Ld. CIT (A) ought to have deleted disallowance appreciating that appellant discharged primary onus when all suppliers personally submitted confirmation of work done for which payment was made vide account payee cheques only.*
3. *Levy of interest u/s 234B & 234C of the Act is not justified.*
4. *Initiation of penalty u/s 271(l)(c) of the Act is not justified.*

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

The interconnected issue raised by the assessee is that the Ld. CIT (A) erred in confirming the disallowance made by the AO for a sum of Rs. 75,10,236/- on account of development expenses against the capital gain.

2. The facts of the case are that the assessee is an Individual and deriving her income from various sources which were declared under different heads of income under the Act. The assessee in the year under consideration declared income under the head short term capital gain and long term capital gain (in short STCG and LTCG) on the sale of land as reproduced here-in-below:

(i)	<i>Short Term Capital Gain</i>	
	<i>Purchase Cost</i>	<i>Rs.32,76,034/-</i>
Add:	<i>Fees to Ahmedabad Urban Dev. Auth.</i>	<i>Rs.59,00,000/-</i>
	<i>Land development expenses</i>	<i>Rs.31,65,536/-</i>
	<i>Total purchase cost</i>	<i>Rs.1,23,41,570/-</i>
	<i>Sale value as per reg. deed dt.10/06/2010</i>	<i>Rs.1,38,39,600/-</i>
	<i>Short Term Capital Gain</i>	<i>Rs.14,98,030/-</i>

(ii) Long Term Capital Gain

		Indexed Cost
Purchase Cost (29.27% share)	Rs.1,62,674	Rs.2,97,330/-
Add: Fees to Ahmedabad Urban Dev. Auth.	Rs.39,21,000/-	Rs.44,11,125/-
Land Development expenses	Rs.43,44,700/-	Rs.43,44,700/-
Total purchase cost	Rs.84,28,374/-	Rs.90,53,155/-
Sale Value as per reg. deed dt.10/06/2010	Rs.95,60,800/-	Rs.95,60,800/-
Long Term Capital Gain(29.27% share)	Rs.11,32,426/-	Rs.5,07,645/-

2.1 The assessee has claimed land development expenses against the STCG and LTCG amounting to Rs. 75,10,236/- only.

2.2 The AO accordingly to verify the genuineness of the expenses required the assessee for details of such development expenses along with documentary evidence.

2.3 In response to the above, the assessee filed certain details of expenditure as recorded on pages 4 to 7 of the AO order.

However, the AO subsequently issued the notices u/s 133(6) of the Act to the respective 8 parties for information/ confirmation. But all the notices were returned as unserved with the remark “not known” or “not found.”

2.4 The AO further to verify the genuineness of the transaction enquired about the bank transactions and observed that there are various deposits made in the bank account before making payment to above 8 parties/contractors. Thus the AO issued notice u/s 133(6) of the Act to the bank to verify the transactions.

2.5 In response to the notice, the manager of the bank filed the necessary details. The AO based on such details observed that -

- a. The money was deposited in the bank of the assessee by her relative (i.e., assessee's son) to facilitate payment towards land development expenses.
- b. All the cheques issued for land development expenses were cleared to Bapunagar Mahila Co-op Bank and found that all the cheques were credited in one current account of H. Financial Services which is a shroff & commission agent.

2.6 Thus the AO was of the view that all these payments were re-routed through the account of Shroff to the assessee. As such Shroff was not involved in the work of land development. Therefore all the expenses incurred by the assessee towards land development expenses are not genuine.

The assessee further did not file any documentary evidence like PAN No. of receiving parties, confirmation of the parties, etc. to prove the transaction as genuine.

2.7 Thus, the AO disallowed the sum of Rs. 75,10,236/- and added to the total of income of the assessee as she failed to discharge her onus to prove the genuineness of the transaction and identity of the person to whom the payments were made.

3. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Learned CIT (Appeal) submitted that the expenditure was incurred for the development of raw and uneven land. All the payments were made through account payee cheques only. Similarly, the service of notice issued by AO was unserved, but it does not mean that the transactions are not genuine.

3.1 The assessee also claim that all relevant document like a copy of bills/invoices, confirmation of parties were filed before the AO during the assessment proceedings. However, the AO called the details of vehicles and vehicles numbers which had been used in the development of the land, but the same was not furnished. As such the contractors were either using their own vehicles or hired vehicles but non-mentioning the vehicles numbers does not lead to form the opinion that the land development work was not genuine.

3.2 The assessee further submitted that the expenditure was incurred towards land development expenses so that the land can fetch a good price on sale.

However, the Ld. CIT (A) observed that the assessee did not file any supporting evidence with confirmation letters like a copy of pan card, residential proof, copy of bank account, etc. to verify the genuineness of the signatures and the details of persons shown in the letters.

3.3 The Ld. CIT (A) further observed that the AO noted all the confirmation letters were of similar type while the assessee contended that merely confirmation is a stereotype, used the same printer does not mean the expenditures are in-genuine.

3.4 In view of the above, the Ld. CIT (A) was of the opinion that the assessee did not discharge her primary onus to claim the deduction for the development expenditure. However, AO has made a proper inquiry to verify the genuineness of the transaction, but the identity of the persons to whom the payments made was not satisfied, and also the payments were not credited in

their account to whom the assessee made payments in respect of development expenditure.

3.5 Thus the Ld. CIT (A) in view of the above confirmed the order of the AO and accordingly dismissed the appeal filed by the assessee.

Being aggrieved by order of the Ld. CIT (A), the assessee is in appeal before us.

4. The Ld. AR before us filed a paper book running from pages 1 to 151. The Ld. AR also filed additional evidence before us with respect to the identity of the creditors to prove the genuineness. The ld. AR further prayed to admit the same and restore the issue to the file of the ld. CIT-A for fresh adjudication as per the provision of the law.

5. On the other hand, the Ld. DR before us vehemently objected on the admission of the additional evidenc.

The ld. DR also submitted that there is no evidence available on record suggesting that the contractors visited to the Income Tax premise to appear before the AO. The ld. DR vehemently relied on the order of the authorities below.

6. We have heard the rival contention and perused the material available on record. The issue in the instant case is that the assessee claimed land development expenses in her computation of income to compute the LTCG and STCG from sale of land. However in support of the claim assessee did not submit the sufficient documentary evidence before the AO as well as Ld.

CIT(A). Therefore, the AO disallowed the claim of development expenditure made by the assessee and subsequently the Id. CIT-A confirmed the order of the AO.

6.1 Before adverting the issue raised by the assessee on merit, the controversy arises for the adjudication of the additional evidences filed by the assessee before us vide letter dated 1-5-2019. Regarding the admission of additional evidences we note that the ITAT has been empowered under rule 29 of ITAT Rules to admit these evidences under specified circumstances which also include the substantial cause. Thus it is clear that the ITAT to render the justice to the parties involved can admit the additional evidences. In holding so we extend our reliance on the judgment of Hon'ble Apex Court in the case K. Venkata Ramaiah Vs. A. Sitarama reddy reported in AIR 1963 SC 1526 wherein it was held as under:

“Held, that the High Court allowed additional evidence to be admitted as it required that evidence either to enable it to pronounce judgment or for any other substantial cause within the meaning of R. 27 (1) (b) of O. 41 of the Code of Civil Procedure. It could not be said that the High Court made the order for admission of additional evidence without applying its mind.

The appellate court has power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment but also for any other substantial cause.”

6.2 On perusal of the additional evidences i.e. identity proof of the parties, we note that CIT-A decided the issue against the assessee due to non-availability of these evidences.

6.3 Thus, we are of the view that these additional documents are crucial to decide the issue on hand. Therefore we admit the additional evidence in the interest of justice and fair play and accordingly restore the issue to the file of the Id. CIT-A for denovo adjudication as per the provisions of law after considering the additional pieces of evidence. It is pertinent to mention that the assessee should cooperate during the proceedings before the Id. CIT-A. It is also important to note that as the matter has been restored to the file of the Id. CIT-A for fresh adjudication, therefore we deem fit not to adjudicate the other contentions of the Id. AR and the DR raised at the time of hearing before us. Hence the ground of appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 15 /05/2019 at Ahmedabad.

**Sd/-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 15/05/2019

Manish

आदेश की प्रतिलिपि ग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

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