

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE HON'BLE JUSTICE(R) SHRI P.P.BHATT, PRESIDENT
AND G.S. PANNU, VICE PRESIDENT**

ITA NO.2201/MUM/2018 : (A.Y : 2013-2014)

M/s. Holtex Engg. Company
Pvt Ltd., (Now merged with
A.T.E Pvt Ltd) 43, Dr. V.B.
Gandhi Marg, Fort, Mumbai.

DCIT -2(1)(2),
Mumbai
PAN No.AABCH 0699 C

(Appellant) Vs . (Respondent)

**Appellant by : Shri Hitesh Jain, AR
Respondent by : Shri Saurabh Kumar Rai, DR**

**Date of Hearing: 15/04/2019
Date of Pronouncement : 31/05/2019**

ORDER

PER G.S. PANNU, VP :

The captioned appeal filed by the Assessee pertaining to Assessment Year 2013-14 is directed against an order passed by CIT(A)-4, Mumbai dated 5.1.2018, which in turn arises out of an order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 25.2.2016.

2. The assessee has raised the following ground of appeal:

"The CIT(A) has erred in confirming the order of the AO in disallowing indexed cost of improvement of Rs.23,13,329/- while computing long term capital gain. On the facts and in the circumstances of the case and in law, the disallowance of

indexed cost of improvement of Rs.23,13,329/- ought to be deleted.”

3. Briefly stated the facts of the case are that the assessee is engaged in the business of manufacturing, assembling, selling, erecting, serving and otherwise deal in metallic card closing for all counts of fibres for the processing of cotton, wool and complete range of synthetic and man-made fibres and other textile briefs. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown capital on sale of land and claimed expenditure under the head “transfer cost, indexed cot of acquisition and indexed cost of improvement”. The Assessing Officer required the assessee to furnish documentary proof in support of the claim. The assessee furnished the cost of improvement before the Assessing Officer and also submitted that expenditure was incurred prior to financial year 1996-97 i.e. 20 years ago and, therefore, it was difficult to gather the same. After perusing the same, the Assessing Officer observed that some of the expenditure are not supported with documentary evidence and in some cases, they could not be categorised as cost of improvement. The Assessing Officer accepted the accepted the cost of acquisition, but however, the Assessing Officer also observed that out of total cost of improvement (without indexation), the assessee has claimed Rs.3,15,423/- in A.Y. 2012-13 and Rs.11,52,599/- in A.Y. 2013-14 on prorate basis and, therefore, applying the same ratio, the Assessing officer disallowed Rs.23,13,329/- of indexed cost of acquisition and added the same to the total income of the assessee.

4. Being aggrieved by the order of the Assessing officer, the assessee carried the matter in appeal before the CIT(A).

5. Before the CIT(A), the assessee reiterated the submissions made before the Assessing officer but could not furnish the supporting

bills/vouchers in relation to the claim of cost of improvement. Hence, the CIT(A) confirmed the action of the Assessing Officer.

6. Before us, Id A.R. submitted that during the F.Y. 1982-83, the assessee had purchased land measuring 1,37,594 sq. Mtrs situated at Chandrapura, Taluka Halol, Dist: Panchamahar for a total consideration of Rs.9,40,297/-. For improvement of the said land, the assessee had incurred Rs.14,68,066/- from F.Y. 1982-83 to 1996-97 and capitalised the same to fixed assets. It was submitted that since the expenses incurred was prior to 20 years, it is difficult to collate the bills and vouchers. It was submitted that to substantiate the claim that these expenses were incurred, the assessee furnished the audited balance sheet for F.Y. 1982-83 to 2012-13, wherein, the expenses incurred on improvement to land were duly capitalised with cost of land and duly audited by the auditor and the same also was not disputed by the Income tax department in any of the financial year. Hence, he requested to allow the indexed cost of improvement of Rs.23,13,329/-.

7. On the other hand, Id D.R. supported the orders of lower authorities and further submitted that the assessee has not been able to furnish the bills and vouchers in support of the cost of improvement of the land. Therefore, he urged to dismiss the appeal of the assessee.

8. We have heard the rival submissions and perused the record of the case. We find that the assessee has incurred the amount towards cost of improvement of the land from the financial year 1982-83 to 1996-97 and the assessment year involved in the year under consideration is 2013-14. The expenditure was booked in assessee's books of account, which was audited by the auditors and no discrepancies were pointed out. The contention of the assessee is that the expenditure was incurred more than 20 years ago and it is difficult to collate the same now. We also find that the existing provisions of

section 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. In this case, the Assessing officer did not allow the claim on the ground that the assessee has claimed Rs.3,15,423/- in A.Y. 2012-13 and Rs.11,52,599/- in A.Y. 2013-14 on prorate basis. However, no where, the revenue authorities have not controverted the expenditure incurred for the improvement of land and doubted the audit report furnished by the assessee during the past years. Since the matter relates to more than 20 years ago, at the moment, it is not possible on the part of the assessee to collect the bills and vouchers pertaining to the expenditure incurred for improvement of land from F.Y. 1981-82 to 1996-97. We also find that the assessee has produced before us the series of orders of this Tribunal, wherein, on similar facts, the Tribunal has allowed the cost of expenditure incurred for improvement of land which were more than 20 years ago. Considering the totality of the facts and circumstances of the case, we incline to allow the ground of the assessee and direct the Assessing officer to delete the addition of Rs.23,13,329/- towards cost of improvement of land.

9. In the result, appeal of the assessee is allowed.

Pronounced on 31/05/2019

Sd/-

**(JUSTICE P.P. BHATT)
PRESIDENT**

Sd/-

**(G.S. PANNU)
VICE PRESIDENT**

Mumbai, Date : 31/05/2019
B.K.Parida, Sr.PS

Copy to :

- 1) The Appellant: M/s. Holtex Engg. Company Pvt Ltd., (Now merged with A.T.E Pvt Ltd) 43, Dr. V.B. Gandhi Marg, Fort, Mumbai
- 2) The Respondent: DCIT -2(1)(2), Mumbai
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai