

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

[Before Shri Pramod Kumar, Vice President]

ITA No. 2189/Ahd/2017
Assessment Year : 2013-14

Sweetoo Apparels

*Om Complex, CG Road,
Navrangpura,
Ahmedabad – 380 009
[PAN : AAHFS 1640 K]*

.....**Appellant**

Vs.

Deputy Commissioner of Income-tax

Circle-5 (2), Ahmedabad

.....**Respondent**

Appearances by:

CN Shah, for the applicant

Anand Kumar, for the respondent

Date of concluding the hearing : 20.02.2019

Date of pronouncing the order : 08.05.2019

O R D E R

1. This appeal challenges correctness of learned CIT(A)'s order dated 16th August 2017, for the assessment year 2013-14.

2. The assessee is engaged in the business of trading in readymade garments, hosiery and gift articles. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed depreciation @ 10% in respect of purchase of certain commercial area, in a building by the name of Turquoise, for Rs. 25,68,24,000/- on 28.04.2011. The Assessing Officer was of the view that since this purchase consideration includes element of price towards undivided share of plot on which building is constructed, to that extent depreciation is not admissible. As the assessee did not give any evidence in support of value of such undivided share in land, the Assessing Officer adopted the stamp duty valuation for such an undivided share in land, as reflected in the purchase deed, as value of undivided share in land at Rs. 3,64,47,500/-. Accordingly, depreciation in respect of this land was declined. Aggrieved by the resultant disallowance of Rs. 36,44,750/-, assessee carried the matter in appeal before the CIT(A) but without any success. While confirming the impugned disallowance, Ld. CIT(A) has observed as follows:-

“4.3 The AO has noticed that the assessee had purchased a building for an amount of Rs. 25,68,24,000/- and claimed depreciation amounting to Rs. 2,60,07,262/-. It is further noticed that the above amount of purchase also included the value of land where no depreciation is allowable. The AO has

relied upon the decision in the case of Alps Theatre 65 ITR 377 (SC) where the Hon'ble Court has observed that the rate of depreciation is fixed on the nature of structure. The AO has further noticed that the assessee has failed to furnish any bifurcation with regard to the value of land. Accordingly, the AO has disallowed the depreciation of Rs. 36,44,750/- related to the land and added to the total income of the assessee.

4.4 During the appellate proceedings, the appellant has contended that the appellant has paid price of Rs. 25,68,24,000/- for purchase of built up area only for shops alongwith right to use common areas and amenities of the said building and not ownership right and only undivided proportionate land admeasuring 478 sqr. mtrs. It is further contended that definition of building is inclusive and it includes roads, bridges, culverts and tubewell below which always there is a land. The appellant has relied upon the decision of Supreme Court in the case of Gwalior Rayon Silk Manufacturing Co. 196 ITR 149. It is also contended that all the 8 shops are used for the purpose of business of readymade garments. It is further contended that in preceding years no such disallowance was made by the AO. It is further contended that the AO has disallowed the depreciation undivided portion of land of 478 sqr. mtrs. as if our firm is absolute owner of said land.

4.5 The facts of the case and the submissions are considered. The AO has disallowed depreciation on land claimed by the appellant on the ground that it is not allowable and relied upon the decision in the case of Alps Theatre. The appellant has mainly contended that the decision of Alps Theatre is applicable only in the case of absolute right of owner ship with a right to dispose of the same. The appellant has relied upon the decision in the case of Gwalior Rayon Silk Manufacturing Co. However, on perusal of the said judgment it is noticed that the facts of the said case are different from the facts of the instant case. The facts of the case of Alps Theatre are applicable to the facts of the case of the appellant. Therefore, the disallowance made by the AO is justified and accordingly the same is confirmed. Thus the grounds of appeal are dismissed."

3. The assessee is not satisfied and is in further appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. I find that the issue in appeal is squarely covered against the assessee by Hon'ble Supreme Court's decision in the case of CIT vs. Alps Theatre [(1967) 65 ITR 377 (SC)] which holds that depreciation is not admissible in respect of land cost of which is embedded in the overall cost of building. Learned counsel, however, contends that this decision is not good law in view of the decision of Hon'ble Bombay High Court in the case of CIT vs. Colour Chem Ltd. [(1977) 106 ITR 323 (Bom)] which stands approved by Hon'ble Supreme Court in the judgment reported as CIT vs. Gwalior Rayon Silk Mfg. Co. Ltd. [(1992) 196 ITR 149 (SC)]. While on this plea, I can only refer to the following observations made by Hon'ble Bombay High Court in the above case:

“The Supreme Court decision on which Mr. Hajarnavis has relied is, in our view, clearly distinguishable on facts. In that case the depreciation was claimed not merely on the cost of erecting the building on the land but also on the cost of the land over which the construction had been put up and it was in that context that the Supreme Court held that the word "building" occurring in the relevant provision of section 10(2) of the Act meant "structure" and did not include the site. If, in the instant case, the cost of the land over which the roads had been laid out was sought to be included in the capital expenditure, the depreciation claimed by the assessee-company would have come within the ratio of the Supreme Court decision. As stated above, over the land which was in existence in the factory premises, roads or roadways were required to be laid out and for laying out such roads or roadways cost was incurred over which depreciation has been claimed. In our view, therefore, the instant case is entirely different from the facts that obtained in the Supreme Court case and, therefore, the ruling relied upon by Mr. Hajarnavis is clearly inapplicable.”

6. The question whether cost of roads will include value of land or not is not really relevant for our purposes. The decision of Alps Theatre (Supra) is clear and unambiguous, and directly on the issue. It is not open to us to act in defiance of the same. In the absence of any other material relied upon by the assessee, the Assessing Officer was justified in adopting stamp duty valuation as value of land. The CIT(A) rightly confirmed the action of the Assessing Officer on this point. I see no reasons to interfere in the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today on the 8th May, 2019.

Sd/-

**Pramod Kumar
(Vice President)**

Ahmedabad, the 8th day of May, 2019

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Copies to:	(1) The appellant	(2) The respondent
	(3) Commissioner	(4) CIT(A)
	(5) Departmental Representative	(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad