

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASSEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1998/Ahd/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Mangla Land Development Corporation</b> 103, K.P. Shopping Center Karelibaugh, Baroda- 390018	<b>बनाम/ Vs.</b>	<b>DCIT</b> Circle-5, Aaykar Bhavan, Race Course Circle, Baroda- 390007
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAC FM6 241 K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vijay Ranjan, AR
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr. DR

सुनवाई की तारीख / Date of Hearing	22/08/2019
घोषणा की तारीख /Date of Pronouncement	06/09/2019

**आदेश/ORDER**

**PER MAHAVIR PRASAD - JM:**

This appeal has been preferred by the assessee against the order of Ld. CIT(A) CAB-3/78/2014-15 dated 30.05.2016 arising out of assessment order dated 26.03.2013 and assessee has taken solely ground that on the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming impugned disallowance of expenditure/loss of Rs. 27,57,500/- made by the Ld. AO.

2. Facts of the case are that the assessee is engaged in the business of land the during the assessment proceeding it is noticed from the ledger account that professional fees to the tune of Rs. 27,57,500/- was paid to Smt. Virbalaben K. Patel who is also partner in the assessee firm. When enquired by the Ld. AO assessee has submitted that Smt. Virbalaben K. Patel has made extra efforts in order to fetch profit for the firm and she used to put extra efforts for the sale of land, to decide the cost of land and to decide the payment terms and to get the recovery of fixed amount and recovery of dues etc.

But the lower authorities were not agree with the contention of the assessee and made addition of Rs. 27,57,500/- by holding that she is one of the partner of the firm with others and other partners did not get the same amount of commission/remuneration.

3. Now assessee has come before us by way of second statutory appeal.

4. We have gone through the relevant record and impugned order and heard both the parties. Assessee's contention is that the firm as well as partner Smt. Virbalaben K. Patel has paid tax on the same amount this and in the case of double taxation and in support of its contention the Ld. Authorised Representative Shri Vijay Ranjan cited an order of ITAT Mumbai Bench in ITA No. 4031/Mum/2003 & ITA No. 4032/Mum/2003 wherein it is held that an amount disallowed in the hands of the Company for corporate tax purpose, should not be taxed again in the hands of its Director as the same amount cannot be taxed twice.

5. In this case we draw support from the case of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Gujarat Gas Financial Services Ltd. [2015] 60 taxmann.com 483 (Gujarat) herein the said judgment is reproduced as under:

*“Section 40(A)2 of the Income-tax Act, 1961 – Business disallowance – Excessive or unreasonable payments (Service charges) – Assessee-company was a 100 per cent subsidiary company of ‘G Ltd.’, a Government company – ‘G Ltd.’ was engaged in distributing gas through pipelines to its customers – Assessee entered into an agreement with ‘G Ltd.’ for providing services etc. to ‘G Ltd.’ – It was agreed that assessee company would pay certain sum for each connection – Said charges were claimed for deduction under section 37(1) which was allowed – Subsequently, Assessing Officer found that assessee was using some space of ‘G Ltd.’ – Assessing Officer initiated proceedings by exercising powers under section 40(A)2 and deducted estimated rent of space from service charges – It was observed that assessee company as well as parent company, both were assessed to tax at maximum marginal rate and, therefore, it could not be said that service charge was paid to G at unreasonable rate to evade tax – Whether since revenue could not point out that assessee evaded payment of tax, invocation of section 40(A)2 was not valid – Held, yes [Paras 13 and 15] [In favour of assessee].”*

5. Thus, in the interest of the justice we set-aside this matter to the file of the AO to verify, if firm as well Smt. Virbalaben K. Patel are assessed to same tax rate then if partner Smt. Viralaben K. Patel has already paid tax then addition made in the hand of assessee shall be deleted.

6. In the result, appeal filed by the assessee is allowed for statistical purpose.

This Order pronounced in Open Court on	06/09/2019
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Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Ahmedabad: Dated 06/09/2019  
TANMAY

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

TRUE COPY

**आदेश की प्रतिलिपि अग्रोषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।