

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2822/Ahd/2017

With

CROSS OBJECTION No. 26/Ahd/2019

(निर्धारण वर्ष / Assessment Year : 2009-10)

The Assistant Commissioner of Income Tax Circle-2(1)(1), Ahmedabad Room No. 103, First Floor, Navjeevan Trust Building, Ahmedabad - 380014	बनाम/ Vs.	Shri Dipak G. Patel Ganesh Corporation House, 100Ft. Hebatpur- Thaltej Road, Nr. Sola Bridge, Off. S. G. Highway, Ahmedabad - 54
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABEP8960D		
(अपीलार्थी /Appellant)	..	Respondent/Cross Objector

राजस्व की ओर से/Revenue by :	Shri L. P. Jain, Sr.D.R.
अपीलार्थी ओर से /Assessee by :	Nupur Shah, A.R.

सुनवाई की तारीख / Date of Hearing	27/09/2019
घोषणा की तारीख /Date of Pronouncement	04/10/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal and cross objection have been filed at the instance of the Revenue and assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad (CIT(A)' in short), dated 04.10.2017 arising in the assessment order dated 30.11.2016 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The grievances, in Revenue's appeal and assessee's Cross Objection, raised being common, both the cases were heard together and disposed of by the common order.

3. The substantive grounds of appeal raised by the Revenue read as under:-

- "1 The Ld. CIT(A) has erred in law and on facts in deleting the addition made u/s. 2(24)(iv) of the Act amounting to Rs. 81,32,230/- being 1/3rd of amount of Rs. 2,43,96,701/- which was self disallowed in the Computation of Income of Ganesh Housing Corporation Ltd.(in which the assessee is one of the directors).*
- 1.1 The Ld. CIT(A) has erred in law and on facts by not appreciating that the entire such expenditure incurred by Ganesh Housing Corporation Ltd. was self disallowed in its hand being personal expenses of the directors and it is a fact that the company being an inorganic body can not have personal expenses as such but would mean the personal expenses of the directors which have been debited in the P&L account of the company.*
- 1.2 The Ld. CIT(A) has failed to appreciate that the expenses so incurred were directly related to the family function of the three directors, therefore, it was the monetary obligation of the assessee (along with other two directors) to bear such expenses in their personal capacity but such obligation was met by the company and, therefore, the AO was right in invoking the provision of the section 2(24)(iv) of the Act. Reference in this regard is made to the decision CIT vs. Nar Hari Dalmia [80 ITR 454 (Del.) and CIT vs. S. Varadrajana[141 CTR Mad 10].*
- 1.3 The Ld. CIT(A) has given relief to the assessee without application of mind in as much as he has failed to consider the unequivocal provisions of section 2(24)(iv) of the Act and which have been analysed in various case laws, some of which are listed above.*
- 1.4 The Ld. CIT(A) has failed to appreciate that even if such sums were not benefits in perquisites, the same were covered by the 2nd limb of section 2(24)(iv) which states " and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid."*
- 1.5 The Ld. CIT(A) has failed to appreciate that even if a different AO (who was assessing the income of another Director) had failed to invoke the provision of section 2(24)(iv) in his case, would not jeopardize the rightful addition in the hands of other directors as it is a trite law that to perpetuate an error is no heroism, to rectify is the compulsion of human conscience (Supreme Court in Distributors Baroda (P) Ltd. vs. UOI)*

- 1.6 *The Ld. CIT(A) has failed to appreciate directing as the inaction and mistake on part of one AO can not act as a binding precedence for all other AO.*
- 1.7 *The Ld. CIT(A) has erred in law and on facts by his failure to follow the direction of the Hon'ble Supreme Court as laid down in the case of ITO vs. Ch. Atchiaiah (218 ITR 239) and reiterated in Shri S.P. Jaiswal vs. CIT (6th March 1997) that "he (the AO) can, and he must tax the right person and the right person alone."*
- 1.8 *The Ld. CIT(A) failed to appreciate that in such situation, an approximation had to be made and in any case, the onus was on the assessee to give the break-up of expenses which should have been added in his hands as section 106 of the Evidence Act mandates that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.*
2. *No appeal in earlier year was filed in this case as the tax effect was below the prescribed monetary limits as laid down by the Hon'ble CBDT. Reference in this regard is made to the provision of section 268A of the I.T. Act."*

4. At the time of hearing, it was submitted by the Ld.AR for the assessee that the appeal filed by the Revenue is hit by recently issued CBDT Circular No.17 of 2019 dated 08/08/2019 revising the previous thresholds pertaining to tax effects. It is *inter alia* noticed that the CBDT vide Instruction No. F. No. 279/Misc/M-93/2018-ITJ dt. 20/08/2019 has observed that Circular No.17/2019 dated 08/08/2019 relating to enhancement of monetary limits is also applicable to all pending appeals. As per aforesaid Circular read with instruction, all pending appeals filed by Revenue are liable to be dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.50 Lakhs. In the instant case, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.50 lakhs and therefore appeal of the Revenue is required to be dismissed *in limine*.

5. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 17 of 2019. Accordingly, appeal of the Revenue is dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeal on showing inapplicability of the aforesaid CBDT Circular in any manner.

6. In the result, the appeal of the Revenue is dismissed.

7. The Ld.AR for the assessee at the time of hearing stated that assessee does not want to press the cross objection. The Cross Objection is accordingly dismissed as not pressed.

8. In the combined result, the appeal of the Revenue is dismissed, whereas assessee's Cross Objection is dismissed as not pressed.

This Order pronounced in Open Court on 04/10/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 04/10/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / 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 ।