आयकर अपीलीय अधिकरण, अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, AHMEDABAD
(THROUGH VIRTUAL COURT)
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	1011/Ahd/2018	2013-14	DCIT Circle-3(1), 5th Floor, AaykarBhavan, Race Course Circle,Vadodara-390007	Shri AnilbhaiBholabhai Patel 6, Darshan Park Society, VIP Road, Karelibaug, Vadodara-390018 **PAN No. ACTPP2509G**

Revenue by :	Shri VirendraOjha, CIT DR.
Assessee by :	Shri M. K. Patel & Smt. Arti N. Shah, AR's

सुनवाई की तारीख/Date of Hearing : 27.08.2020
घोषणा की तारीख /Date of Pronouncement : 19.10.2020

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The appeal has been filed by the Revenuefor A.Y. 2013-14which are arising from the order of the CIT(A)-12, Ahmedabad dated 06.02.2018, in the proceedings under section 143(3)of the Income Tax Act, 1961 (in short "the Act").

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred by ignoring the fact that the assessee is disclosing the capital gain on sale of lands every year, therefore, the apparent is not real as the intention of the assessee was to earn profit by purchasing and selling of land repeatedly and not

earn from appreciation in value of investment. Such activities of the assessee are adventure in the nature of the trade as they are meant for trading and not for investment.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deciding that gains from frequent property transactions of the assessee are not business profit but are capital gain.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition made on account of unexplained unsecured loan.

4. The appellant craves to add to, amend or later the above ground as may be deemed necessary."

3. The first interconnected issue raised by the Revenue in Ground No. 1 and 2 is that the Learned CIT-(A) erred in holding that the income generated by the assessee on the sale and purchase of land was chargeable to tax under the head capital gain instead of business income as held by the AO.

4. The facts in brief are that the assessee in the present case is an individual and filed his return of income declaring total income at Rs.7,88,19,970/- and agriculture income of Rs.1,32,315/- only. Out of the said total income, an income of Rs.6,73,00,895/- was declared under the head capital gain consisting of Rs.6,29,69,084/- towards the long-term capital gain and Rs.43,31,811/- towards the short-term capital gain.

5. However, the AO during the assessment proceedings observed certain facts as detailed under:

5.1 The assessee during the year has sold 19 properties/lands which were in the nature of agricultural lands. Some of the lands were sold through the development agreements after converting into non-agricultural lands in such a manner that the assessee was executing the sales deed/handing over the

possession to the party whereas the developer was acting as the confirming party.

5.2 The assessee has incurred cost for the conversion of agriculture lands into non-agricultural lands such as title clearance, approval of layout plans/maps from local authority, construction of compound wall and bridge which were claimed as cost of improvement.

5.3 The lands were sold to the developers in which the assessee was either the partner or has substantial interest in development agreement.

5.4 The assessee has been purchasing the lands continuously since the last several Financial Years beginning from 1993- 94 to 2010-11.

5.5 The entry in the books of accounts, showing the lands as investment and not as stock-in-trade, is not conclusive evidence to draw an inference that the assessee is not engaged in the business of dealing in lands.

6. In view of the above, the AO was of the opinion that the assessee is carrying on a systematic activity of purchasing and selling of the lands which is in the nature of business. The AO also found that the ITAT in the own case of the assessee for the Assessment Year 2006-07 in ITA No. 238/AHD/2010 vide order dated 30-04-2013 has held that the assessee is engaged in the business of trading in lands. Accordingly, the AO treated the income of capital gain as shown by the assessee under the head business and profession. Hence,the AO made the addition of Rs.2,80,44,681/- to the total income of the assessee.

7. Aggrieved assessee preferred an appeal to the Learned CIT(A) who directed the AO to tax the impugned income under the head capital gain by observing as under:

> *"6. As to the treatment of sales and purchases of land and gain therefrom, it is seen from the order dated 27/10/2016 of the Hon. ITAT 'B' Bench, Ahmedabad for the A.Yrs. 2007-08, 2009-10 to 2012-13 in the case of the assessee wherein the Department has treated the capital gains as business income which was also confirmed so by the CIT(A), the ITAT has allowed the appeal in favour of the assessee and against the Revenue holding that "land/properties were held by the assessee as capital asset before its sale and consequential gains arising from sale thereto are chargeable under the head 'Capital Gains'. Accordingly, the AO is directed to consider the gains arising on sale of land/properties under the head Capital Gains". The ITAT has gone ahead to further direct the AO to de novo consider the relief as and where claimed by the assessee u/s 54B relevant to assessment years under appeal in accordance with law after requisite opportunity to the assessee. In view of the order dated 27/10/2016 of the Tribunal, the sale and purchase of land under consideration for the A.Y. 2013-14 is also to be treated as capital gains only. The AO is accordingly directed to delete the addition made of Rs. 2,80,44,681/- on account of treatment of capital gain as business income."*

8. Being aggrieved by the order of the Learned CIT(A) the Revenue is in appeal before us.

9. The Learned DR before us vehemently supported the order of the AO whereas the Learned AR before us submitted that the Tribunal in the own case of the assessee for the Assessment Years 2007-08 to 2012-13 bearing ITA Nos. 70 to 73/AHD/2016, 371/AHD/2016 and 29/AHD/2012 vide order dated 27.10.2016 has held that the assessee is not engaged in the business of dealing in lands and, therefore, the income on the sale and purchase of the lands is chargeable to tax under the head capital gain. Accordingly, the Learned AR vehemently relied on the order of the Learned CIT(A).

10. We have heard the rival contentions and perused the materials available on record. At the outset, we note that this Tribunal in the own case of the

assessee (supra) has decided the issue in favor of the assessee involving identical facts and circumstances and after considering the order of the Tribunal bearing ITA No. ITA No. 238/AHD/2010 pertaining to the Assessment Year 2006-07 where the activity of purchase and sale of lands was held as business income. The relevant extract of the order is reproduced as under:

> *"11. We have carefully considered the rival submissions and assessment order as well as the order of the CIT(A) appealed against and also various documents and referred to at the time of hearing and case-laws cited. The common issue that transcends in all the present appeals is whether gains arising on sale of land and other properties by the assessee in the relevant assessment years is required to be taxed under the head "capital gains" as offered by the assessee or is to be treated as "business income" of the assessee. The issue involved is essentially factual in nature. It is the case of the assessee that the land and other properties were no correction and acquired/purchased over several years and held as "capital asset" in the nature of investment. From the written submissions of the assessee as extracted by the CIT(A) in his order, we note that there a considerable time lag between the purchase and the sale of land and other properties. Simultaneously, the land/properties have been declared as "capital investment" by the assessee all along. We also take note of the fact that some of the properties were let out and rent thereon was earned as a yield on such investments. Agricultural income has been consistently declared year-after-year on agricultural land so held before its sale. The non-agricultural land so held were shown as investment and subjected to wealth tax being capital asset. On perusal of the written submissions as reproduced by the CIT(A) in para-6 of his order, we note that the land/properties were purchased and held for several years in many cases before its sale. Coupled with this, we also take note of the fact that assessee has large capital of its own at its disposal which is far in excess of the corresponding investments made in land/properties over years. On cumulative reading of these glaring facts, we fail to comprehend the action of the Revenue in holding capital gains earned on sale as declared to be a business venture. It is manifest that the AO as well as CIT(A) misdirected themselves in law and on facts in holding the land/properties to be in the nature of trading asset merely on the ground that some of the agricultural land were converted into non-agricultural land and some agreements were entered for the development of the land in the year under appeal acquired and held for decades in many cases. We find considerable weight in the plea of the assessee that intention at the time of purchase to hold impugned land/properties as a capital asset is manifest on records. The balance-sheet filed by the assessee over years, wealth-tax returns filed by the assessee, adequacy of its own capital clearly underscore the intention of the assessee to hold land/properties as capital asset as claimed. Inextricably, we also take note of the plea of the assessee that he is a co-owner of impugned land/properties holding certain percentage of ownership-rights therein*

and the claim of the land/properties as capital asset has been accepted by the Revenue in the hands of other co-owners in the assessment proceedings u/s.143(3) of the Act. This fact has remained uncontroverted. We also note that having regard to the facts noted above, the Coordinate Bench of the Tribunal in assessee's own case relevant to AY 2004-05 has decided the issue in favour of the assessee. Thus, we find that the action of the AO was simply guided by the considerations of revenue alone outside the bounds of rationality. At this juncture, we have also carefully perused the order of the Coordinate Bench of Tribunal in assessee's own case for AY 2006-07 where adverse view has been taken. However, we take note of the fact that the Coordinate Bench of the Tribunal in the matter for AY 2006-07 has taken a different view in departure with the earlier order of the Coordinate Bench relevant to Asstt.Year 2004-05 mainly on the premise that the agricultural income has not been declared on the agricultural land held in that year. As pointed out on behalf of the assessee, agricultural income has been duly reported in all assessment years except AY 2006-07. Therefore, the facts prevailing in the captioned appeals are proximate with AY 2004-05 where the facts are found to be on same pedestal and distinguishable qua AY 2006-07. Thus, the facts prevailing in AY 2007-08 are somewhat different. Therefore, respectfully following the decision of the Coordinate Bench of the Tribunal in AY 2004-05 and having regard to the totality of the facts and circumstances noted above, we find considerable merit in the plea of the assessee. We accordingly hold that land/properties were held by the assessee as capital asset before its sale and consequential gains arising on sale thereto is chargeable under the head of "capital gains". Accordingly, the AO is directed to consider the gains arising on sale of land/properties under the head "capital gains". In the light of the facts noted above, the AO is further directed to de novo consider the relief as and where claimed by the assessee u/s.54B relevant to assessment years under appeals in accordance with law after affording requisite opportunity to the assessee. We accordingly set aside the issue towards eligibility of relief claimed u/s.54B of the Act back to the file of the Assessing Officer for fresh consideration. "

11. There was no change in the facts and circumstances of the case on hand with thefacts of the case as discussed above. Furthermore, the Learned DR has not brought anything on record to controvert the finding of the Learned CIT(A). Accordingly, we are not inclined to interfere in the order of the Learned CIT(A). Hence, the ground of appeal of the Revenue is dismissed.

12. The second issue raised by the Revenue in Ground No. 3 is that the Learned CIT(A) erred in deleting the addition made by the AO for Rs.

37,25,000/- on account of unexplained unsecured loan under Section 68 of the Act.

13. The assessee during the assessment proceedings failed to furnish the necessary details to establish the identity, genuineness of the transactions and creditworthiness of the parties from whom he has taken the loan amounting to Rs.37,25,000/- only under the provisions of Section 68 of the Act. The details of the parties from the assessee has taken the loan stand as under:

Shri Parnav H. Amin Rs. 7,25,000/-
Bansari Enterprise Rs. 30,00,000/-

14. Thus, the AO in the absence of necessary details treated the aforesaid loan as unexplained cash credit under Section 68 of the Act and added the same to the total income of the assessee.

15. Aggrieved assessee preferred an appeal to the Learned CIT(A) who deleted the addition made by the AO by observing as under:

> *"6.1 In connection with the additions u/s 68, the paper book containing the identity of the creditors, genuineness of transactions and credit-worthiness of the creditors were forwarded to the AO for his examination and comments. The comment of the AO received vide letter dated 1/7/2017 was made available to the appellant who made the response on 19/12/2017. There is nothing relevant material in the report of the AO which can be held against the appellant. On going through the details, it is seen that the credits of Rs.30,00,000/- from Bansari Enterprise and Rs.7,25,000/- from Shri Pranav H. Amin are genuine and meet all the tests u/s 68/69A of the Act and there remains no case for addition u/s 68 of the Act. The AO is directed to delete the addition of Rs.37,25,000/-.*
>
> *7. Thus the appeal is partly allowed."*

16. Being aggrieved by the order of the Learned CIT(A) the Revenue is in appeal before us.

17. The Learned DR before us vehemently supported the order of the AO whereas the Learned AR submitted that the loan taken from M/s Bansari Enterprises for Rs.30 lakhs was returned through the banking channel in the Financial Year 2013-14. Furthermore, the confirmation of the party along with bank statement of the party was furnished during the remand proceedings.Similarly, there was the opening balance in the account of Shri Pranav H Amin amounting to Rs.40 Lacs and a sum of Rs.7,25,000/- was received in the year under consideration. But at the same time there was the repayment of the loan amounting to Rs.7,25,000/- and Rs.7,75,000/- respectively. Furthermore, the confirmation, bank statement and the Income Tax Return of the party was filed during the remand proceedings.

18. The Learned AR also contended that there was no adverse finding in the remand report furnished by the AO. Thus, the Learned AR submitted that there cannot be any addition by treating such amount of loan as unexplained unsecured loan under Section 68 of the Act. Accordingly, the Learned AR vehemently relied on the order of the Learned CIT(A).

19. We have heard the rival contentions and perused the materials available on record. From the preceding discussion, we note that the assessee has justified the conditions applicable with respect to cash credit under Section 68 of the Act i.e. identity, creditworthiness of the parties and the genuineness of the transactions of the loan taken from the parties as discussed above during the appellate proceedings. The necessary details furnished by the assessee in support of his claim were also forwarded to the AO for his comment. But we note that the Learned CIT(A) has given a clear finding that there was no adverse remark of the AO in the remand report with respect to the impugned

unsecured loan. Therefore, the Learned CIT(A) has deleted the addition made by the AO. At the time of hearing the Learned DR has not brought anything on record contrary to the finding of the Learned CIT(A). Accordingly, we are not inclined to interfere in the order of Learned CIT(A). Hence, the ground of appeal of the Revenue is dismissed.

20. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Court on 19th October,2020 at Ahmedabad.

Sd/-	**Sd/-**
(RAJPAL YADAV)	**(WASEEM AHMED)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 19/10/2020

TANMAY, Sr. PS *TRUE COPY*

आदेश की प्रतिलिपि अग्रेषित/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(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad