

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 478/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Anjani Infra Block No. 142, FP No.47, T.P. Scheme No. 27, Shangrila Heights, Moje Vilige, Kosad, PAN : AAWFA 0376 M	Vs	Dy. Commissioner of income Tax, Central Circle-2, Surat-395001
Assessee / appellant		Revenue / respondent

Assessee by	Shri Samir Shah, CA
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	29.06.2021
Date of pronouncement	26.07.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of ld. Commissioner of Income tax (Appeals)-4, Surat dated 12.06.2018 for assessment year (AY) 2013-14. The assessee has raised following ground of appeal:-
“1.That on facts and circumstance of the case, the learned CIT(A) has grossly erred in dismissing the appeal of the appellant filed against disallowance of professing fees of Rs.8,00,000/- as made by the learned AO after treating the income disclosed by the appellant firm as unexplained cash credit.”
2. Brief facts of the case are that assessee is a firm and engaged in business of a builder and developer. The assessee filed its return of income for assessment year 2013-14 on 25.09.2013 declaring total income of Rs.7,92,54,000/-.The case was selected for scrutiny. During assessment, the Assessing Officer

noted that a search and seizure action was carried in case of Shri Lavjibhai Daliya and Shri Jyantibhai Babaria group on 17.07.2012. During the course of survey, the partner of assessee disclosed additional unaccounted income of Rs.8,00,54,000/-. The Assessing Officer further noted that assessee has debited expenditure of Rs.8.00 lakh from the income disclosed in survey. The Assessing Officer asked the assessee that no expenditure is allowable from the income disclosed during the survey as it an additional income over and above legal income and show cause as to why the professional fees of Rs.8.00 lakh out of income disclosed in survey be not rejected. The assessee filed its reply dated 10.03.2015. In reply, the assessee stated that disclosure of income made in this firm, was made together with other business entities covered in the group known as Laljibhi Daliya and Jyantibhai Babaria cases. The assessee is engaged only in business of building and developing of residential and other housing project. No other activities or investment are carried out or undertaking by the assessee-firm. The disclosure of unaccounted income of Rs.8 lakh (approx) was made by firm to ask receipt of on-money in the business of real estate. The assessee has paid professional fees of Rs.8.00 lakh to their legal consultant. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer treated the payment of professional fees as cash credits. After the Assessing Officer treated the additional income declared in survey as deeded income of assessee under section 68 and disallowed the professional fees. On further appeal before the Ld. Commissioner of Income-Tax (Appeals) [CIT(A)] the action of Assessing Officer was upheld. Thus, further aggrieved the assessee has filed present appeal before us.

3. We have heard the submission of Ld. Authorized Representative (AR) represent assessee and Ld. Departmental Representative (DR) for the

Revenue. Ld. AR of the assessee submits that assessee-firm paid the professional fees of Rs.8.00 lakh after deducting Tax at Source (TDS) and credited to their accounts. The Ld. AR of the assessee furnished the copy of 26AS Form of Chartered Accountant (CA) of S.N.K & Co. The Ld. AR of the assessee submits that the fees were also paid by assessee-firm to a professional firm in financial years 2013-14 and 2015-16 respectively. The Ld. AR submits that professional fees paid by the assessee-firm is deductible expenses. The Ld. AR submits that relevant documentary evidence about payment of professional fees was furnished before the Assessing Officer. The Ld. AR further submits that while replying to the question No.5 during recording of statements of partners Shri Laljibhi Daliya and Jyantibhai Babaria disclosed it unaccounted income for Rs.8 Crore (approx). The partners of assessee also furnished the bifurcation of additional undisclosed income. The additional income was declared from 'business activities' of real estate development. The assessee has not undertaken any other activities during this financial year. The assessee is entitled for expenses for earning of such 'business income' which was declared during the survey. The Ld. AR of the assessee submits that the co-ordinate bench in number of decisions allowed the expenses for earning such business income. To buttress his submission, the Ld. AR of the assessee relied upon following decision of Tribunal:-

- DCIT, Cir-3 Surat vs. Sun Corporation ITA No.567/Ahd/2012
- DCIT, Cir-3 Surat vs. Jagdamba Corporation in ITA No.1935/Ahd/2012
- DCIT, Cir-3, Surat v. Suyog Corpoatin ITA No.568/Ahd/2012
- ITO vs. Jamnadas Muljibhai [2006] 99 TTJ 197 (Rajkot),
- My Home Developers v. ITO [2015] 155 ITD 335 (Ahmedabad-Trib)

4. On the other hand, Ld. Departmental Representative (DR) for the Revenue supported the orders of lower authorities. The Ld. DR for the revenue further

submits that while recording the statement the assessee has not claimed any expenses against such unaccounted income. The income was declared over and above the regular income. The assessee is not entitled for claiming the expenses of professional fees. The Ld. DR for the revenue prayed for dismissal of the appeal.

5. We have considered the rival submission of both the parties and have gone through the order of authorities below. We find that there is a very narrow dispute in the present appeal for our consideration is whether the assessee can claim expenses of professional fees against the additional unaccounted income disclose during the survey. There is no dispute that during the survey, the statement of partners of assessee was recorded. During the statement the partners of the assessee declared unaccounted income of Rs.8.00 crores (approx). However, while filing return of income, the assessee-firm claimed expenses of Rs.8 lakhs on account of professional fees. We have perused the statement of partners recorded by survey party. On perusal of the statements, we find that while making disclosure of Rs.8.00 crores, the partners gave the bifurcation of disclosed income. From carefully perusal of answer to the Q.No.5 we find that there is no such averment that the assessee would not claim any expense is made. The lower authorities disallowed the expenses by treating the disclosure at admission of assessee over and above the regular income and disallowed the legal expenses. We noted that the assessee has not undertaken any other activities except the development of flat construction of various housing projects.
6. We find that on similar facts of the case of DCIT vs. Suyog Corporation (supra) while affirming the order of Lt. CIT(A) in that case allowed expenses against the on-money to the assessee which were also engaged similar business activities. Similar view was taken in DCIT vs. Jamnadas Muljibhai

(supra) by treating the on-money as business receipt of the assessee. Considering the decisions of co-ordinate benches and the fact that professional fees was paid to the firm of consultant after deducting the TDS. Therefore, we do not find any justification in disallowing such expenses.

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

Order pronounce in the open court on 26/07/2021 as per Rule 34(5) of Income tax (Appellate Tribunal) Rules 1963.

Sd/-

(Dr ARJUN LAL SAINI)

ACCOUNTANT MEMBER

Surat, Dated: 26/07/2021

Dkp. Sr.P.S. O.S

Copy to:

1. Appellant-Anjani Infra Block No.142m, FP No.47, T.P. Scheme No.27, Shangrila Heights, More Village, Kosad, Surat
2. Respondent- DCIT, CC-2, AAykar Bhavan, Majura Gate, Surat-395001
3. CIT(A)-Surat-4
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat