

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No.1150/AHD/2016 (AY 2011-12)

(Hearing in Virtual Court)

Sai Ashish Developers, Sai Ashish Residency, At & Post Baben, Tal.Bardoli, District Surat. PAN: AIDPB 1316 R	Vs	The Income Tax Officer, Ward-1, Bardoli,
Appellant		Respondent

ITA No.1151/AHD/2016 (AY 2013-14)

Sai Ashish Developers, Sai Ashish Residency, At & Post Baben, Tal.Bardoli, District Surat. PAN: AIDPB 1316 R	Vs	The Income Tax Officer, Ward-1, Bardoli,
Appellant		Respondent

Assessee by	Shri Ashwin Parekh – AR
Revenue by	Shri H.P.Meena – CIT(DR)
Date of hearing	06/01/2022
Date of pronouncement	11/01/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of Id.Commissioner of Income Tax (Appeals)-1, Surat for the A.Y. 2011-12 and 2013-14 dated 21.03.2016 and 28.03.2016 respectively. In both the appeals, the assessee has raised certain common grounds of appeal, certain

facts for both the assessment years are common, therefore, both the appeals were clubbed, heard and are decided by a consolidated order. The assessee raised following grounds of appeal for the A.Y. 2011-12 as under:

"I. The learned CIT(A) has grievously erred in law and on facts in confirming the action of Assessing Officer of making assessment of the project of "M/s. Sai Ashish Residency" in the status of "AOP" without appreciating the facts that this project is already assessed in the case of Bhaveshbhai Arvindbhai Buha in his Individual capacity as per the Returns of Income filed with Dy. Commissioner of Income-tax, CC-2, Surat. The Status of "AOP" be held as null and void as the same is determined by Assessing Officer disregarding the legitimate right of Assessee to choose the entity of assessment / Business.

II. The learned CIT(A) has grievously erred in law and on facts in confirming the status of "AOP" for A.Y.2011/12 without appreciating the facts that there was no activity in A.Y.2011/12 as the project commenced in A.Y.2012/13.

III. The learned CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 40,00,000/- on account of payment of consideration of purchase of plots already recorded in the books of accounts of Bhaveshbhai Arvindbhai Buha (Individual) and supported by a Satakhat. The addition of Rs. 40,00,000/- should be deleted.

The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing."

2. Brief facts of the case are that a survey action under section 133A of the Act was carried out in case of project "Sai Ashish Residency" situated at Baben, Kharvasa Road, Bardoli, Surat on 16.12.2012. Before making survey, the

Department made certain pre-survey enquiries and collected certain evidence about the development of project in the form of brochure of the project containing sight plan, floor wise details of row houses and type of construction and structural frame, internal fittings and certain fixtures. The Assessing Officer (AO) while passing the assessment order under section 144 r.w.s 147 on 12.02.2015 treated the assessee as AOP [Assessment of Person] and made addition of Rs.40 lakhs on account unexplained investment. On appeal before the Id.CIT(A), the action of AO was upheld. The Id. CIT(A) also upheld the status of assessee as AOP. The addition of Rs.40 lakhs was also upheld by taking view that the assessee has filed copy of Satakhat (agreement to sale) dated 04.04.2011, which was never filed before the AO and the same was treated as additional evidence. The additional evidence was not admitted for the want of proper application under Rule 46A of the Income Tax Rules. Further aggrieved, the assessee filed present appeal before this Tribunal.

3. We have heard the submission of Id. Authorised Representative (Id.AR) of the assessee and the Id.CIT-DR for the Revenue. Initially, this appeal was heard on 14.10.2021 at length, however, for seeking certain queries, the hearing of appeal was fixed on 06.01.2022 in Virtual Court hearing. At the

time of initial submissions on 14.10.2021, the ld AR for the assessee submitted that entire additions in both the years has been taxed in the hand of Shri Bhavesh Bunha. However, no such evidence was find on record, therefore, these appeals were fixed for clarification. The ld AR for the assessee on the merit of the grounds of appeal submits that the assessee has basically raised two grounds of appeal. In Ground No.I and II, the assessee assailed the status of assessee as AOP and in Ground No.III, the assessee has assailed the order of lower Authorities in confirming the addition on account of investment. The ld.AR of the assessee further submits that second ground of appeal raised in Ground No.III relates to investment in purchase of land, which was the subject matter of development of project, if it is held that consideration was paid in individual capacity and if it is factually proved and that no other person has joined in making investment or imparting any effort in carrying out of the project it would be factually proved. Project was carried out in individual capacity by Shri Bhavesh Arvind Bunha. To substantiate the fact that investment was made by Bhavesh A. Bunha, the assessee filed copy of same Satakhat (agreement to sale) before the AO on 20.05.2014 during the assessment for the A.Y. 2012-13. The assessment for the A.Y. 2011-12, 2012-13 and 2013-14 was made

simultaneously by the same AO. No additional evidence or additional document was filed by assessee before Id CIT(A), which were not filed before the AO. The appeal for AY 2012-13 is still pending before CIT(A). The Id.CIT (A) treated the same as additional evidence of same was not considered and ultimately due to non-consideration of material evidence, the additions were upheld. The Id.AR further submits that no activity during the year under consideration was carried out by the assessee. The Id.AR for the assessee further submits that in case of Ground No.III is held in favour of assessee that consideration was paid in individual capacity by Bhavesh Bunha, the substantial ground no.1 [I &II] will automatically lead to the conclusion that there was no AOP.

4. On the other hand, the Id.CIT-DR for the Revenue supported the order of Id CIT(A).
5. We have considered the submission of both the parties and have gone through the orders of authorities below. We find that the AO passed the assessment order under section 144 r.w.s 147 of the Act by treating assessee as AOP. The AO further made addition on account of unexplained investment of Rs.50 lakhs. The Id.CIT(A), confirmed the action of AO by taking view that the assessee has filed additional evidence, which was not

filed before AO and that no application for admission of additional evidence is filed by the assessee. Before, us the ld AR for the assessee vehemently submitted that the same AO was making assessment for the year under consideration as well as for two subsequent years and that the copy of Satakhat was filed in AY 2012-13. We find that before the ld. CIT(A), the assessee filed copy of Satakhat dated 04.04.2011, copy of which is at page no.36 to 41 of paper book (PB). On perusal of the contents of said Satakhat, we find that it has direct relevance to the grounds of appeal raised by the assessee and the same require consideration. Therefore, instead of the fact that the copy of Satakhat was filed independently or not in the record of assessment for the year under consideration before AO or not, we admit the same as relevant evidence for real determination of issue in hand and remit the issue to the file of ld CIT(A) to adjudicate the issue afresh by considering the Satakhat dated 04.04.2011 and pass the order in accordance with law. In the result the ground No. III is allowed for statistical purpose.

6. Considering the fact that we have remitted the substantial Ground No. III to the file of ld.CIT(A), therefore, substantial Ground No. I & II are also restored to the file of ld.CIT(A) to determine the status of assessee after

considering the source of investment in project. In the result the ground No. I & II are also allowed for statistical purpose.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

ITA No.1151/AHD/2016 for A.Y. 2013-14:

8. The assessee raised following grounds of appeal for the A.Y. 2013-14 as follows:

"I. The learned CIT(A) has grievously erred in law and on facts in confirming the action of Assessing Officer of assessing the project of "M/s. Sai Ashish Residency" in the status of "AOP" without appreciating the facts that this project is already assessed in the case of Bhaveshbhai Arvindbhai Buha in his Individual capacity as per the Returns of Income filed with Dy. Commissioner of Income-tax, CC-2, Surat. The Status of "AOP" be held as null and void as the same is determined by Assessing Officer disregarding the legitimate right of Assessee to choose the entity of assessment/Business.

II. The learned CIT(A) has grievously erred in law and on facts in confirming the addition by estimate at Rs.4,50,00,870/- based on the incorrect statement of Bhaveshbhai Arvindbhai Buha. The CIT(A) failed to appreciate the incomplete project, total cost of construction of Rs. 2,83,45,472/-, profit of Rs. 22,67,018/- following percentage completion method, the Work in progress at Rs. 5,24,50,223/- shown in the Return of Income of Bhaveshbhai Arvindbhai Buha and fact of no evidentiary value of statement recorded during survey proceedings unsupported by any evidences impounded. The addition of Rs. 4,50,00,870/ should be deleted. The appellant reserves the right to add, alter, modify, amend withdraw any of the grounds of appeal before hearing."

9. Considering the fact that we have restored all the grounds of appeal for the A.Y. 2011-12 to the file of ld.CIT(A) on the substantial issue of AOP as well as the unexplained investment. Therefore, this appeal is also remit back to the file of ld.CIT(A). We find one more reason that in para 4.1, the ld.CIT(A) held that the assessee has filed additional evidence and the same was not accepted by taking view that no specific request for admission of additional evidence is made by assessee.
10. Considering the fact that grounds of appeal in A.Y. 2011-12 and 2013-14 are inter-connected for the year under consideration, first ground is common for both the years, however, in A.Y. 2013-14 the addition is made on estimation of income/project. Therefore, the issue relevant to estimation of income of AOP is interlinked and also remitted back to ld CIT(A) to adjudicate the same after adjudication of ground of appeal in A.Y. 2011-12. The assessee is given liberty to file evidence / additional evidence to substantiate the ground of appeal and move appropriate application in case fresh/new evidence is filed to substantiate its ground of appeal or its contention.
11. In the result, this appeal is assessee also allowed for statistical purpose.
12. To sum up, both the appeal of the assessee are allowed for statistical purpose.

Order announced on 11th January, 2022 in open court by placing result on the notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 11/01/2022 /SGR*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

/ / TRUE COPY / /

Sr.Pvt. Secretary, ITAT, Surat