

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 1194/Ahd/2019
Assessment Year 2015-16**

The DCIT, Circle-1(3), Ahmedabad (Appellant)	Vs	Chandrakant Somabhai Patel (HUF) 169/3, Vidhatra Bhuvan Madan Gopal Haveli, Manekchowk, Ahmedabad-380001 PAN: AABHP5138F (Respondent)
----------------------------------------------------	----	------------------------------------------------------------------------------------------------------------------------------------------------------------

**Appellant by : Shri Satish Solanki, Sr. D.R.
Respondent by : Shri M.K. Patel, Advocate**

Date of hearing : 01-02-2022
Date of pronouncement : 23-02-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad, (in short referred to as CIT(A)), dated 08-05-2019, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the “Act”) pertaining to Assessment Year (A.Y) 2015-16.

2. The grounds raised by the Revenue reads as under:

(1) *The Id. CIT(A) has erred in law and on facts in reversing the action of the Assessing Officer in treating the Long Term Capital Gain as Business Income without appreciating*

the facts that the factual matrix of the transaction made is an adventure in the nature of trade as held in the assessment order.

(2) The Id. CIT(A) has erred in law and on facts in not considering the ratio of Hon'ble Supreme Court's judgment in the case of G Venkatswami Naidu & Co which holds that even an isolated and single transaction may be of an adventure in nature of trade.

(3) On the facts and circumstances of the case, Id. CIT(A) ought to have upheld the order of the Assessing Officer.

(4) It is, therefore, prayed that the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored.

3. As is evident from the above, the solitary grievance of the Revenue is against the allowance by the Ld.CIT(A) of the claim of the assessee to the transaction of sale of land as being in the nature of transfer of an asset earning capital gain thereon, as opposed to the Assessing Officer treating the same as business income .

4. The facts relating to the issue are that the assessee had during the impugned year sold for consideration of Rs. 6 Crores which was purchased in 2006 for consideration of Rs. 14 lakhs. The profits thereon were returned to tax as Long Term Capital Gain by the assessee (HUF) which was computed after indexing the cost of acquisition, resulting in capital gain being computed at Rs. 5,70,31,288/-. The assessee paid taxes thereon @ 20% as applicable by law on Long Term Capital Gains. The Assessing Officer held that the transaction of sale of land was an adventure in the nature of trade and therefore subjected the surplus from the sale of land amounting to Rs. 5,84,95,350/- ,computed by deducting from the sale consideration only purchase consideration and other expenses relating to stamp duty, registration fees, to tax at the normal rate. Thus by treating the impugned transaction/business income, the assessee was denied the benefit of reducing the indexed cost of acquisition of the asset, as applicable for computing the capital gains, and also the benefit of reduced rate of tax payable on Long Term Capital Gain @ 20%.

5. Aggrieved by the same the matter was carried in appeal before the ld. CIT(A) who found no justification for treating the transaction as being in the nature of business and accordingly reversed the order of the A.O. on this count. It is against this order of the Ld. CIT(A) that the revenue has preferred before us.

6. We have heard the contentions of both the parties. The ld. D.R. has relied on the order of the Assessing Officer in support of his contention that the Ld. CIT(A) had erred in accepting the claim of the assessee treating the transaction as sale of capital asset. Ld. Counsel for the assessee on the other hand, has relied on his submissions made to the lower authorities as also the findings of the Ld. CIT(A).

6.1. We have heard both the parties. The findings of the Ld.CIT(A) setting aside the order of the AO holding the transaction to be an adventure in the nature of trade at para 4 of his order is as under:

4. Decision:

I have carefully considered the assessment order and the submissions of the appellant. The ground no. 1, 2 & 3 relating to the claim of Long Term Capital Gain considered as business income by the AO allowing the benefit of indexation of the cost. The basic fact are submitted by the appellant in the paper book as under:

5. *During the year, the appellant has offered to tax long term capital gains on sale of a residential plot located at Divine Highland Co-op. Hsg. Service Society Ltd. The plot was purchased on 16/12/2006 for Rs. 14,00,000/- (copy of purchase deed places at pages 15 to 37 of PB) and was sold on 26/11/2014 for Rs.6 crores (copy of sale deed places at pages 38 to 67 of PB) i.e. after a period of 8 years. The assessee had purchased the plot in the residential scheme known as Divine Highland Co-op. Hsg. Service Society Ltd. The plot was purchased in 2006 and thereafter, the assessee has not done any activity with regard to the said plot to improve it, and it was sold as it is in the same status after 8 years. The intension right from the time of purchase is for investment purpose only and the said plot is never shown as a business asset or stock in trade of the appellant. The appellant has never even included this plot in the business balance sheet, nor claimed any depreciation in the past and has treated it as a personal asset only. Moreover, the appellant has never traded in*

immovable property nor done any business in real estate in the past or in subsequent years. This is the solitary transaction of purchase and sale of immovable property, and that too after holding it for 8 years."

The AO has mentioned that the HUF has been created in 1995 and doing business of selling gold and silver ornament in the name & style of Abhishek Palace. The AO has given show cause as to why not the sale of plot is considered as business transaction. The explanation given by the appellant was not acceptable and the claim for Long Term Capital Gain was denied and the sale consideration has been taxed as income from business and profession. The appellant has filed sale and purchase documents and contents therein are not in dispute. It is seen that the appellant has invested in only one plot which have been sold after 8 years. There is no frequent sale or purchase of rear estate by the appellant. The appellant has claimed it to be investment and never claimed as business asset hence not claimed any depreciation. Authorized Representative discussed ratio in the case of following case laws :

- a) 35 ITR 594(SC) G. Venkatswami Naidu & Co. - ratio distinguished by Authorized Representative.*
- b) 195 ITR 386(Bom) Indian Hume Pipe Co. Ltd. - ratio distinguished by Authorized Representative.*
- c) Arjundev K. Khanna HUF - Ahmedabad ITAT ITA. No. 1308/Ahd/2008 -- ratio distinguished by Authorized Representative*

The appellant has relied on the ratio of following case laws :

- (i) (2013) 40 taxmann.com 161 (Jodhpur ITAT) Marudhar Hotels (P) Ltd.*
- (ii) (2018) 96 taxmann.com 12 (Delhi ITAT) DCIT/ Arjun Puri*
- (iii) (2018) 90 taxmann.com 329 (Rajkot ITAT) AC IT/ Narendra J. Bhimani*

In view of facts of the case and the ratio laid down in the case laws (supra), I agree with the contention raised by the appellant. Ground no. 1 to 3 are allowed.

7. We have gone through the assessment order also and we are in complete agreement with the Ld.CIT(A) that there is no reasonable basis with the A.O. for holding the transaction of sale of land as being in the nature of adventure in the course of business. On the contrary, we find that the A.O. has only referred to certain decisions of the Hon'ble Apex Court and the Hon'ble High Courts to infer that the

impugned transaction was an adventure in the nature of trade, which finding, we find are not based on appropriate appreciation of the ratio laid down in the said cases.

The relevant findings of the A.O. at Para V & VI of the order bring out this fact as under:

vi) The reply of assessee to treat this as capital gain and not as business income is not acceptable for the discussion herein below.

V. Here it is pertinent to discuss decision of Hon'ble Supreme Court in case of G Venkatswami Naidu & Co v/s CIT vide 35 ITR 594, in this case the Hon'ble Supreme Court had discussed that whether a transaction is an adventure in nature of trade is a question of mixed law and fact and held it in favour of Department. The Hon'ble Supreme Court also mentioned that isolated and single transaction may be of an adventure in nature of trade if some essential features of trade are present in such transaction, here the assessee had purchased said land on 18-12-2006 as is evident from the working of Long Term Capital Gain furnished with Return of Income filed by the assessee HUF. The said land is sold at the value many times higher than it was bought for this itself shows profit earning motive behind such investment in plot of land.

Another decision of High Court of Bombay in case of Indian Hume Pipe Co Ltd vide 195 ITR 386, it discussed that the assessee was not a dealer in real estate or a developer of land as its line of business was entirely different. It was also not disputed that the bulk of land was purchased in 1941-42 from B and represented an isolated transaction of purchase of land. Here in this case also though it is an isolated transaction but it do not take away the sense of business in it.

The Hon'ble I.T.A.T. Ahmedabad in case of Arjundev K Khanna HUF vs I.T.O. Ward 10(2), Ahmedabad vide its order ITA No 1308/Ahd/2008 rejected the plea of assessee HUF and treated the sale of land as business income instead of capital gain. In this case there was only one plot and it was sold in two part in two different years and the assessee had not taken steps for providing the streets and bifurcating the plot. No steps were taken to make the plot of land suitable for housing society. The plot was purchased in 1971 and sold in 2001.

VI. After considering the facts of the case, the reply furnished during assessment proceedings, and the above referred cases which supports the reasons to treat the earning from sale of plot of land as business income and not as capital gain. Moreover the plot in question has never been an investment and the assessee has not earned any income from the said investment which would entitle the assessee to claim that the sale of property involve transaction in nature of capital gain. Investment in land made by the assessee way back in 2006 did not yield any return and thereby the assessee sold the plot of land thereby earning income which is "an adventure in the nature of trade".

8. As is evident from the above, the only fact which has led him to arrive at his finding that the transaction was an adventure in the nature of trade is that the land was sold at many times higher value than that at which it was bought. He has, we find, selectively highlighted the proposition laid down in the said cases and not in totality and applied it to the facts of the present case. He has applied the ratio laid down by the apex court in the case of G Venkataswami Naidu(supra) stating that in the said case it was held that even an isolated transaction would constitute adventure in the nature of trade if some essential features of trade are present and applied it to the facts of the present case stating that the land was sold at many times the purchase price and hence was an adventure in the nature of trade. He has referred to the Hon'ble Bombay High Court decision, mentioning certain facts therein that it was a isolated transaction and thereafter abruptly held that though in the present case also the transaction is isolated but it has all characters of business in it. Similarly his reference to the decision of the ITAT Ahmedabad Bench also makes no sense and it is not clear how it supports his finding in the present case.

8.1. It appears that the A.O. has made absolutely no effort to examine the facts of the case in the light of the proposition laid down by the various judicial authorities referred to by him for holding a transaction to be an adventure in the nature of trade. Though, admittedly he has gone on to interpret the said term in Para VI of his order but has failed to apply the same appropriately in the facts of the present case. His

interpretation of the term adventure in the nature of trade at para 6 of the order is reproduced hereunder for ready reference:

VI. After considering the facts of the case, the reply furnished during assessment proceedings, and the above referred cases which supports the reasons to treat the earning from sale of plot of land as business income and not as capital gain. Moreover the plot in question has never been an investment and the assessee has not earned any income from the said investment which would entitle the assessee to claim that the sale of property involve transaction in nature of capital gain. Investment in land made by the assessee way back in 2006 did not yield any return and thereby the assessee sold the plot of land thereby earning income which is "an adventure in the nature of trade". In the context of issue at hand it is important to examine the meaning of the term 'adventure in nature of trade' mentioned in Section 2(13) of the I T Act. It has now been defined in the Income Tax Act. As far as the dictionary meaning of the word adventure is concerned, it implies a pecuniary risk, a venture, a commercial enterprise. The word 'venture' in its turn is defined as a commercial activity in which there is a risk of loss as well as chance of gain. A 'trade' were in the context of the definition of the expression 'business' is a wider concept and once this term is associated with the term 'adventure' the scope has further enlarged. The adventure in nature of trade is allowed to transaction that constitutes a trade or business but may not be a business itself. This has been so. Because the business of characterized by some of the essential ventures such as repetitive transactions, holding of stock in trade dealing with the customers and implied intention between the parties, etc. But, contrary to this even an isolated transaction can satisfy the description of an adventure in the nature of trade. For an adventure, it is not necessary that there should be a series of transactions, i.e, both of purchase and of sales. It is possible that a single transaction of purchase and sale may be outside the company's line of business, but can constitute an adventure in the nature of trade. To supplement as also to further elaborate this discussion, it can be added that the word 'adventure' may be in the realms of travel, voyage, hunting, etc, but it is attached with other words, i.e. adventure in the nature of trade, then the motive of adventure is attached with the motive of trade. All the judicial citations mentioned above lead to the inevitable conclusion that the sale is in the nature of trade. Accordingly the indexation claimed by the assessee is not allowed and added back to the income of the assessee as business income. Therefore the income / profit earned by the assessee HUF on sale of Plot of Land amounting Rs 5,84,95,3507- is treated as Business Income and not as Long Term Capital Gain treated by the assessee HUF. The working of such profit / income is as under:

<i>Sale consideration received on sale of plot of land At A/15 Divine High land,Sola, Tal Daskroi, Dist. Ahmedabad.</i>	<i>Rs. 6, 00, 00, 000/-</i>
-------------------------------------------------------------------------------------------------------------------------	-----------------------------

Less- Purchase Consideration	Rs. 14,00,000/-	Rs. 15,04,650/-
Stamp Duty	Rs. 83,300/-	
Registration fees	Rs. 21,350/-	
Profit on Sale of Plot of Land		Rs. 5,84,95,350/-

Penalty proceedings u/s 271(1)(c) of the I T Act, 1961 for furnishing inaccurate particulars of its income by treating it as long term capital gain instead of Business income are initiated.

9. As per the A.O. himself an adventure in the nature of trade refers to a transaction though isolated but which has the ingredients of trade or business in it. It has to be in the nature of a commercial transaction. Meaning thereby, that an adventure in the nature of trade, refers to transaction/s undertaken primarily with the commercial motives to earn profits. This is the proposition which has been laid down in the decisions referred to by the A.O. also. Now the facts on the basis of which the A.O. has held the transaction to be an adventure in the nature of trade are merely that the asset was bought in 2006 and sold in the impugned year, that it was bought for consideration of Rs. 14 lakhs and sold for 6 crores. Merely because, the assessee earned huge profits thereon cannot alone be the criteria or basis for understanding the intention of the assessee in undertaking the transaction. If this be so, then every transaction involving transfer of capital asset where consideration is multiple times the purchase value, it would be treated as an adventure in the nature of trade.

10. The Ld. CIT(A), we find ,has noted that except for the facts as stated above, there was nothing else indicating that the transaction was undertaken by way of or with the intention of conducting it by way of a business. He has pointed out that this was the solitary transaction undertaken by the assessee, and had not frequently such transactions nor had the asset sold ever been claimed as a business asset and

depreciation claimed thereon, the assessee having treated the said land as investment all throughout.

11. In view of the above, we agree with the Ld. CIT(A) that there was no basis at all with the A.O. for treating the transaction as an adventure in the nature of trade. We therefore see no reason to interfere in the order of the Ld. CIT(A) allowing the assessee's claim of treating the transaction as that of transfer of a capital asset income earned thereon being in the nature of capital gain. The ground of appeal raised by the Revenue are therefore dismissed.

11. In effect, appeal of the Revenue is dismissed.

Order pronounced in the open court on 23 -02-2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 23/02/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद