

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH  
(Conducted Through Virtual Court)  
**Before: Shri Waseem Ahmed, Accountant Member**  
**And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2913 /Ahd/2012**  
**Assessment Year 2009-10**

The ITO, Ward-5(1), Baroda (Appellant)	Vs	Shri Kanubhai M. Patel, 56/D, Omnagar Society, B/h Govindrao Park, Near Water Tank, Panigate, Baroda-390017 PAN: ABTPP3455E (Respondent)
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**Revenue by: Shri V.K. Singh, Sr. D.R.**  
**Assessee by: Shri S.N. Soparkar, Sr. A.R. &**  
**Shri Bandish Soparkar, A.R.**

Date of hearing : 10-02-2022  
Date of pronouncement : 13-04-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-V, Baroda in Appeal no. CAB/(A)V-276/11-12 vide order dated 05/10/2012 passed for the assessment year 2009-10.

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

*“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in*

*(i) deleting addition of Rs. 4,17,55,810/- made u/s 50C of the IT Act by treating income arising out of sale of lands as income under the head Business instead of income under the head Capital Gain as treated by the Assessing Officer .*

*(ii) deleting disallowance of Rs. 4,26,000/- made on account of interest expenses claimed.*

*(iii) directing to allow set off of earlier year's brought forward business loss of Rs. 1,24,283/- .*

*2. The appellant craves to add to, amend or alter the above grounds as may be deemed necessary.*

*Relief claimed in appeal.*

*The order of the CIT(A) on the above issue be set aside and that of the Assessing Officer be restored.”*

3. The brief facts of the case are that the assessee is an employee of Sun Pharmaceuticals Industries Limited (SPIL) and earned income from salary, income from business and income from other sources. SPIL was considering to acquire a piece of land adjacent to their factory in Halol and it requested the assessee to facilitate the transaction. Accordingly, the assessee purchased four pieces of land in Halol in AY 2008-09 for a consideration of Rs. 23,37,817/- and after converting them into one single land and converting its use from agricultural to non-agricultural, sold the land to Sun Pharmaceuticals Limited for a consideration of Rs. 36,50,001/- in AY 2009-10. SPIL also arranged for loan to the assessee from M/s Quality

Investments Pvt. Ltd., a group entity, to effectuate the above transaction. The net profit of Rs. 4,08,184/- after claiming expenses was offered to tax as business income by the assessee in its return of income. In his statement recorded u/s 131 of the Act, the assessee submitted that he is doing part time business as real estate agent outside of office hours and hence sale of land qualifies as business income. The Ld. AO rejected assessee's argument that he is engaged in the business of real estate agent and treated the transfer of sale of land as transfer of capital asset and taxable under the head 'capital gains' from short term capital asset and not as business income. The Ld. AO invoked provisions of s. 50C of the Act and brought to tax full value consideration of Rs. 4,39,29,600/- to tax in the hands of the assessee as short term capital gain (allowing deduction of purchase consideration and stamp duty and registration charges). Further, assessee's claim for various business expenses against business income on sale of land were also rejected. The Ld. AO while passing the order observed as under:

*“18. To conclude, it is prove beyond doubt from the above discussion that the assessee has not been doing business of estate agent from 2002-03 till date, secondly he has capitalized the opportunity of earning super normal profit by picking up offer of the Company and at the same time assisting company to be in the good books of officers and getting the land transfer in his name with clear title from the land owner and carrying out all formalities with the other Government Department on behalf of the Company to execute a sales deed of the said Sand having clear title without any encumbrance of any person to pass on parcel of the land in the name of the Company. To carry out this transaction he made an investment in the land as claimed by him and kept the land in his name and therefore the Capital assets shown by him at the end of A.Y. 2008-09 is not at all stock-in-trade but it is a Capital asset which is held till the permission of NA for Industrial use in the name of the Company is*

*granted and therefore Section 50 C of the Act is definitely applicable in this case on the sales transaction made with the Company by the assessee. The assessee's claim of different expenses is not allowed in view of the discussion made in earlier paras no 13 & 14 of this order. Accordingly the full consideration amounting to Rs. 4,39,29,600/- is taxed as Capital Gain allowing only purchase cost of land with Stamp duty payment and registration charges.”*

4. In appeal before Ld. CIT(A), the assessee submitted that whether income qualifies as ‘business income’ or ‘capital gains’ depends upon intention of the assessee at the time of purchase. In cases where land has been purchased solely with the intention of resale at a profit and the purchaser has no intention of holding the property for himself or otherwise using it or enjoying it, it would be a strong presumption that the transaction is an ‘adventure in the nature of trade’. In the present set of facts, the transaction was entered with an intention to resell at a profit and hence income qualifies ‘business income’. The assessee relied upon various case laws in support of his contention. The Ld. CIT(A) accepted assessee’s contention and held that income qualifies as ‘business income’ and accordingly, provisions of section 50C cannot be applied. While allowing the assessee’s appeal, the Ld. CIT(A) observed as under:

*“I have considered the facts of the case as well as the observation of the AO and the arguments put forth by the AR of the appellant, From the documents filed before the undersigned, it is seen that as per agreement dated 15.09.2007 between Sun Pharmaceutical Industries Ltd (SPIL) and the appellant, the appellant purchased certain agricultural lands adjacent to the factory premises of the company and after getting various clearances for non agricultural use, the*

lands were transferred to the SPIL. The finances for the transaction were provided by M/s Quality Investment Pvt. Ltd. which was a company of the promoter group holding 8.83 % shares in SPIL. The AO has raised certain doubts about the authenticity of agreement dated 15.09.2007 produced by the appellant. The doubt has been raised on the basis of statement u/s 131 of the IT Act given by the appellant in which he has claimed that the land sale to SPIL was a coincidence. Even if, we accept the statement u/s 131 quoted by the AO, it is evident from the reply of the appellant that **purchase was made with the purpose to sell the land at a profit. The appellant could not have held the land for enjoyment because funding for the purchases came from borrowed moneys** So far as the observation of the AO in para 14 of the assessment order that cheque numbers in the ledger account of the M/s Quality Investment Pvt. Ltd. were not matching with the entries in the bank account of the appellant is concerned, it has been clarified by the AR of the appellant that cheques mentioned in the ledger of M/s Quality Investment Pvt. Ltd. were used to get demand drafts in the name of the appellant. The appellant has furnished necessary evidences in this regard. It is very clear from the entire exercise that agricultural lands purchased by the appellant were purchased with the sole intention of transferring them to SPIL at a profit after getting necessary clearances as per the agreement and the appellant neither had any intention nor means to hold these lands. This is evident from the fact that the lands in question were purchased through funds borrowed from M/s Quality Investments Pvt. Ltd. The AO has also stated in the assessment order



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*So far interest payment of Rs.4,26,000/~ is concerned, it is seen from the assessment order that the appellant had taken a loan of Rs.37,00,000/- whereas cost of acquisition of the land was Rs. 21,73,790/- only. This represents 59% of the total borrowings. There is no evidence that balance amount of loan was used in connection with trading in the land. Therefore, the AO is directed to allow 59% of the interest paid to Quality Investment Pvt. Ltd. as deduction to the appellant. Balance amount of interest is hereby disallowed.”*

*“7.1 In regard to ground No.6 regarding disallowance of set off of loss of Rs.1,24,283/-, the AR of the appellant submitted as under:*

*"Vide **Ground No. 6**, the Appellant has challenged the action of the AO in not allowing the set off of loss of Rs. 1,24,283 being brought forward loss of the earlier year from the business income of the current year. The AO has disallowed the loss on the ground that the Appellant has not produced any evidence of incurring the loss of Rs. 1,24,283. We submit that the loss of earlier year represents payment of interest to M/s. Quality Investment Pvt. Ltd. The Appellant had borrowed the money for acquiring the land on which interest is paid. We therefore request your kind office to direct the AO to verify the claim of the Appellant, and allow the set-off as per law.”*

6. In appeal before us, the DR drew our attention to page 2 of assessment order and contended that the assessee is not a real estate broker and has never earned commission income. The assessee has only engaged in a single transaction of sale and purchase of aforesaid properties under consideration and that too at the behest of his employer. The letter dated 15/09/2007 issued to the assessee by SPIL is an afterthought and no Firm existed in the name of assessee, which was engaged in real estate broking. The assessee had no earlier history of land transaction and he had not registered himself as a

broker. The assessee was a full time employee of SPIL (employer) and the terms of employment barred the assessee to engage in any independent business activities. The Ld. DR relied on observations made by the Ld. AO in the assessment order. The Ld. DR contended that provisions of section 50C squarely apply in the instant facts since the assessee was not engaged in any business of land broking.

7. In response, the Ld. Counsel for the assessee submitted that the assessee has engaged in a business transaction and therefore provisions of section 50C will not apply. The assessee bought 4 pieces of land, converted them from agricultural to non-agricultural and sold back the same to SPIL for a profit, which was duly reflected as business income in the return of income. The intention at the time of purchase of land was resale to SPIL i.e. to earn profits and hence the transaction qualifies as 'adventure in the nature of trade'. The assessee is a real estate broker and vide letter dated 15/09/2007 issued to the assessee by SPIL, he was engaged to carry out a business transaction by SPIL since assessee's firm was engaged in real estate broking. The Ld. Counsel for the assessee drew our attention to page 34 of the Paper-Book to show that the land in question was treated as stock-in-trade in his books of accounts and hence income earned from sale thereof qualifies as 'business income'. The Ld. Counsel for the assessee relied on Supreme Court decision in the case of of **G. Venkataswami Naidu & Co. v. CIT 35 ITR 594 (SC)** to contend that if an asset is bought with a pre-determination to sell it at a profit, it will qualify as a business transaction. The assessee took unsecured loan from SPIL's group entity on which interest was also paid in order to give effect to the transaction. Hence, the

income from sale of land qualifies as 'business income' on which provisions of section 50C of the Act have no applicability.

8. The issue for consideration before us is twofold. Firstly, whether from the facts before us, it can be inferred that the assessee is engaged in the business of real estate on part-time basis and hence income from sale of aforesaid plots of land qualifies as 'business income'. Secondly, whether the above sale of plots of land qualifies as 'adventure in the nature of trade' in the instant set of facts.

9. We shall address the first question. In our considered view, the assessee has not been able to establish that assessee has been doing the business of real estate agent. The assessee has contended that he doing part time business as estate agent after office hours and on Sunday and holidays. He has further claimed that he has shown the property sold as 'stock-in-trade' in his books and hence he is engaged in the business of real estate. However, from perusal of facts, it is evident that he is working as a full-time employee of Sun Pharmaceuticals as Manager Regulatory affairs and his job is to make application for renewal of license for food and drugs controlled by Administration Gandhinagar and is drawing salary income. Further, from the terms of employment with SPIL as mentioned in the assessment order, they prohibit the assessee from engaging in any form of independent business other than the business of his employer company SPIL. For the past 5 to 6 years, he has only bought and sold the aforesaid four pieces of land, converted their land use from agricultural to non-agricultural and sold the same back to his employer, SPIL. He has made no other transaction for

purchase and sale of land apart from the above. The assessee has engaged in purchase and sale of land only on the request of his employer vide letter dated 15/09/2007 in order facilitate purchase of land adjacent to their factory premises in Halol and has not engaged in any other independent activity of purchase and sale of land and nor has earned any commission income. The assessee is not a holder of a valid license for doing business of real estate agent or registered broker registered with the association of registered brokers. By merely showing the aforesaid pieces of land as stock-in-trade in own books does not substantiate that the assessee is real estate agent, when the totality of facts gives a different picture. The assessee's real estate business did not have a Firm Name, Proprietorship Name or business address, from where he has been conducting business after office hours. The assessee has not mentioned anything about his Firm name in the return of income nor is the Firm name mentioned in the letter dated 15/09/2007 addressed by SPIL to the assessee. Also, it is a commonly known facts that real estate agents normally earn 'commission' on purchase and sale of land and not 'business income' on sale of entire property, which again supports the view that the assessee is not a real estate agent. Further, for a real estate agent, it is not common to 'buy' the piece of land in his own name and then selling the same to his own employer. Rather, real estate agents earn commission income, which the assessee has never earned throughout his professional career though he claims to be a real estate broker. It is common for a real estate agent to maintain office, cash book, bank book, ledger accounts, vouchers, bills, copy of bank statements etc. which are all missing in the instant set of facts, which leads to the inescapable conclusion that the assessee is not a real estate agent.

10. Now on the second issue, whether the assessee can be said to have engaged in 'adventure in the nature of trade', in the instant set of facts, while working as a full-time employee of SPIL. In order to come to a conclusion on this issue, it would be useful to refer to some judicial precedents which throw useful light on the subject. In the Supreme Court decision in the case of **G. Venkataswami Naidu & Co. v. CIT 35 ITR 594 (SC)** the appellant firm was acting as managing agents of M/s Janardana Mills Ltd. The assessee purchased four contiguous plots of land adjoining the mills of the managed company. After about five years these properties were sold in two plots to the managed company M/s Janardana Mills Ltd.. The first lot was sold on 1-4-1997, and the second on 10-11-1947 for total consideration of Rs. 52,600. These two sales realized Rs. 43,887 in excess of the purchase price. The ITO treated the said amount of Rs. 43,887 as the income of the appellant for the assessment year 1948-49 under the head "Business" holding that there was no evidence to show that the appellant had purchased the said lands for agricultural purchases or that it had acquired them as an investment. He also found that since the lands were adjacent to the mills of the company and during the time that the appellant was in possession of these plots it made no effort to put up any structures on them or to cultivate them; and so the only object with which the appellant had purchased these plots was to sell them to the mills at a profit. That is why, though the transaction was in the nature of a solitary transaction, it was held that it had all the elements of a business transaction and was thus an adventure in the nature of trade. The High Court held that the said transaction was an adventure in the nature of trade and so it was rightly taxed under the head "business". On appeal to the Supreme Court held that pieces of land were

purchased with the sole intention of selling them to M/s Janardana Mills Ltd. and assessee did not have any intention to hold the land. Hence, the solitary transaction of purchase and sale of land was an ‘adventure in the nature of trade’. The Hon’ble Supreme Court made the following observations:

*“The conduct of the appellant in regard to the plots subsequent to their purchase clearly showed that it was not interested in obtaining any return from them. No doubt the appellant sought to explain its purpose on the ground that it wanted to build tenements for the employees of the mills; but it had taken no steps in that behalf for the whole of the period during which the plots remained in its possession. Besides, it could not be assumed in the case of a firm like the appellant that the acquisition of the open plots could involve any pride of possession to the purchaser. It was really not one transaction of purchase and resale. It was a series of four transactions undertaken in pursuance of a scheme and it was after the appellant had consolidated its holding that at a convenient time it sold the lands in two lots. When the Tribunal found that, as the managing agent of the mills, the appellant was in a position to influence the mills to purchase its properties its view could not be challenged as unreasonable. If the property had been purchased by the appellant as a matter of investment it would have tried either to cultivate the land, or to build on it; but the appellant did neither and just allowed the property to remain unutilised except for the net rent of Rs. 80 per annum which it received from the house on one of the plots. The reason given by the appellant for the purchase of the properties by the mills had been rejected by the Tribunal; and so when the mills*

*purchased the properties it was not shown that the sale was occasioned by any special necessity at the time. The Tribunal was, therefore right in inferring that the appellant knew that it would be able to sell the lands to the mills whenever it thought it profitable so to do. Thus the appellant purchased the four plots during two years with the sole intention to sell them to the mills at a profit and this intention raised a strong presumption in favour of the view taken by the Tribunal.*

*Therefore, the High Court was right in taking the view that the transaction in question was an adventure in the nature of trade.*

10.1 Also, the Pune Tribunal in the case of **Dilip Battu Karanjule v. ITO [2016] 74 taxmann.com 12 (Pune - Trib.)** held that where assessee identified land on behalf of existing and known persons and entire money towards purchase of land had been financed by such persons to whom land was ultimately sold within a short span of its acquisition without putting land for agricultural use at any point of time, it was to be held that activities carried out by assessee towards purchase and sale of impugned land was adventure in nature of trade and thus a business activity chargeable to tax.

10.2 In the case of **Harshadkumar Amrutlal Patel v. DCIT [2019] 111 taxmann.com 31 (Ahmedabad - Trib.)**, the Ahmedabad ITAT held that where assessee had purchased agricultural land and immediately thereafter converted said land into non-agricultural land for commercial use, etc., driving force for purchase of land was to exploit it commercially, and, thus, profit arising on sale being nearly 30 times of investment in a period of 3-4

years owing to such concerted and planned transaction of purchase and sale of land had been rightly regarded as business activity by Assessing Officer.

10.3 The Kerala High Court in the case of **N.A. Baby v. DCIT [2015] 62 taxmann.com 22 (Kerala)** held that where assessee having purchased agricultural land, converted same into barren land and thereupon sold it within short period of purchase, said activity was to be regarded as adventure in nature of trade and, consequently, profit earned on sale of land was to be taxed as business income.

10.4 Now, in the facts of the present case, the assessee bought four plots of land, consolidated the same into a single plot, converted their use from agricultural to non-agricultural and sold the same to SPIL at a profit. It is evident from contents of letter dated 15-09-2007, that the intention at the time of purchase of land was to sell the same to SPIL at a profit, and assessee has no intention to hold the land as an investment or utilize for any other purpose. In our view, the case is directly covered by facts in the case of **G. Venkataswami Naidu & Co. v. CIT 35 ITR 594 (SC)** and also Pune ITAT in the case of **Dilip Battu Karanjule v. ITO [2016] 74 taxmann.com 12 (Pune - Trib.)** wherein on identical facts, the Courts held that the intention at the time of purchase has to be seen and if the intention at the time of purchase was to sell land at a profit the transaction would qualify as 'adventure in the nature of trade'. In the instant facts. the assessee took an interest-bearing unsecured loan (which was arranged by SPIL) to give effect to the transaction. The assessee did not make any improvements to the land and as soon the land use was converted to non-agricultural, the assessee sold the same to SPIL for a profit, as was intended from the beginning. Thus, in

our view, though the assessee was acting as a full time employee and acted on the request of his employer to undertake the present transaction, still in our considered view, the present engagement qualifies as an adventure in the nature, by applying the ratio of the above decisions. It may also be useful to refer to the observation of Ld. AO while passing the assessment order, at page 13, Para 10 observed as below:

*“The above analysis of the engagement letter proves that the assessee has merely invested his money in this arrangement to get good return in short time as per company's offer of acquiring impugned land having clear title and in no way it can be said that he is doing a business of estate agent since if he has been doing this business he would have not signed the said agreement letter with the company or he would have put up his own condition against the company's condition and then a fix price or a fix percentage of consideration of land would have been worked out as an amount of remuneration/compensation for doing this work. The assessee has managed the fund for purchase of land through his own efforts and subsequently sold the said land to earn profit on it meaning thereby he has put in his money as an investment to earn profit. Above analysis jointly read with our earlier observation in this order on the aspect of doing a business of real estate broker clearly indicates that the assessee has only acted to earn profit by making investment in this opportunity.*

10.5 The above observations of Ld. AO in the assessment order also indicate to the fact that the assessee has engaged in the afore-mentioned

transaction to make profit, although the transaction was entered into at the request of his employer, SPIL. Hence, from an analysis of facts, it is apparent that the assessee has entered into a transaction with the intent to sell land at a profit by undertaking the necessary steps to convert their land use from non-agricultural to agricultural, which in our considered view would qualify as 'an adventure in the nature of trade'.

10.6 In view of the above, we are of the considered view that the transaction undertaken qualifies as 'adventure in the nature of trade' and hence provisions of section 50C would not apply to the instant set of facts. We therefore hold that Ld. CIT(A) has not erred in facts and in law in holding that the present transaction qualifies as 'adventure in the nature of trade' and hence section 50C does not apply.

11. In the result, Ground No.1 of Department's appeal is dismissed.

12. Having held that the aforesaid transaction qualifies as 'an adventure in the nature of trade', we are of the view that assessee is entitled to claim interest expenses of Rs. 4,26,000/- on account loan taken to give effect to the transaction and also set off of earlier year's brought forward business loss of Rs. 1,24,283/- as per law. We are therefore of the view, that Ld. CIT(A) has not erred in facts and in law in holding that assessee is entitled to claim interest expenses of Rs. 4,26,000/- on loan taken and allowing set off of earlier year's brought forward business loss of Rs. 1,24,283/-. In the result, Ground Nos. 2 and 3 of Department's appeal are dismissed.

13. In result, Department's appeal is dismissed.

Order pronounced in the open court on 13-04-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 13/04/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL 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