

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER
आ.अ.सं./ITA No.398/SRT/2018 (AY 2013-14)
(Hearing in Virtual Court)

Gujarat Infrastructure Co. Plot No. 243/1, GIDC Estate, Umbergaon-396171 PAN : AAHFG 6011 E	Vs	Principal Commissioner of Income-tax, Valsad 301, Palak Arcade, Aaykar Bhavan, Shanti Nagar, Tithal Road, Valsad-396001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से /Assessee by	None
राजस्व की ओर से /Revenue by	Shri H. P. Meena CIT-DR
सुनवाई की तारीख/Date of hearing	29.08.2022
उद्घोषणा की तारीख/Date of pronouncement	05.09.2022

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. Principal Commissioner of Income-Tax-Valsad [for short to as “Ld. PCIT”] dated 22.03.2018 passed under section 263 of Income-Tax Act (Act) dated 30.03.2016 for assessment year (AY) 2013-14. The assessee has raised the following grounds of appeal: -

“1. The ld. Pr. CIT erred on facts and in law in initiating revision proceedings u/s 263 without appreciating that order passed by the Assessing Officer was neither erroneous nor was prejudicial to the interests of revenue.

2. The ld. Pr. CIT erred on facts and in law in setting aside the order passed by Assessing Officer by invoking provisions of section 263 of the Act.

3. The ld Pr. CIT erred on facts and in law in holding that an amount of Rs.1,84,80,600/- is liable to be assessed u/s 69 on the ground that value of land to this extent was not recorded in the books without appreciating that entire purchase cost of land is duly recorded in the books and was subjected to scrutiny not in the year under reference but in earlier assessment years as well and that fact that there was no purchase of land during the year.

*4. The ld. Pr. CIT erred on facts and in law in holding that the appellant was not entitle to claim partner’s remuneration of Rs.40,00,000/- as deduction against ‘**on money**’ admitted in the course of survey and offered as income in the return of income.*

5. The ld. Pr. CIT erred on facts and in law in holding that development expenses incurred were disproportionately high when compared with the cost of land without pointing out any defect in the books of accounts and without appreciating that provision s of section 145 were neither invoked by the Assessing Officer CIT in the course of revision proceedings.”

2. Brief facts of the case are that assessee-company was engaged in business of real estate development. The assessee filed its return of income for assessment year 2013-14 on 31.03.2015 declaring income of Rs.3.82 crores. The case was selected for

scrutiny and assessment was completed under section 143(3) on 30.03.2016. The Assessing Officer while passing the assessment order made certain including the additions under section 68 of Rs.4.15 crores and added Rs. 12.72 lacks as business income of assessee. The assessment order was revised by Ld. PCIT on the proposal of "Range Head" dated 15.11.2017 and 16.11.2017.

3. Before revising the assessment order, the Ld. PCIT identified three issues;

- (i) the assessee-firm has made Power of Attorney vide No.3046/2012 dated 25.10.2012 registered with Sub-registrar, Umbergaon in the name of one of its partners namely Jitendra Kunwerji Gala. As per this Power of Attorney, the assessee-firm was in possession of 2,73,543 square meter of agricultural land at Timbhi, Umbergaon, Valsad. However, the assessee-firm has shown the remaining land valued at Rs.1,84,80,600/- in its balance-sheet. The Assessing Officer was required to invoke the provisions of Section 68 of the Act for treating the value of the investment to the extent of Rs.1,84,80,600/-.
- (ii) The Assessing Officer was required to invoke the provisions of Section 69 of the Act for treating the value of the investment to the extent of Rs.1,84,80,600/-,

which was not recorded in the books of accounts of the assessee and unexplained investment and was required to be added the same to the total income of the assessee. Failure on the part of the Assessing Officer has rendered the assessment order erroneous as well as prejudicial to the interest of Revenue. In assessee's case a survey was conducted on 01.11.2012 and the assessee-firm had admitted to have received Rs.4,15,62,000/- in cash. The entire amount of Rs.4,15,62,000/- was assessed under section 68 of the Act as cash credit for assessment year 2013-14 in the assessment order. Further, on perusal of the case records, it is found that the assessee-firm had paid remuneration of Rs.40 lakhs to its partners.

- (iii) The assessee's book profit after excluding the survey disclosure works out to Rs.7,19,295/-. Accordingly, the allowable remuneration works out to Rs.5,21,57/- as against Rs.40 lakhs.

4. On the basis of such identified issues, the Ld. PCIT issued show cause notice under section 263 by taking a view that the assessment order is erroneous as well as prejudicial to the interest of justice for the want of complete inquiry on the above issues. The assessee contested the revisional proceedings by filing its reply dated 13.12.2017. On furnishing reply, the assessee was asked to file certain details of land

including date of purchase and the documents of such purchases, details of development expenses from assessment years 2008-09 to 2013-14, the details of unsecured loans, confirmation of loan, carry forward and interest paid of such loans and the advances received during the assessment years 2008-09 to 2013-14 with complete details. The Ld. PCIT recorded that no details were furnished despite serving specific notices. The Ld. PCIT further recorded that the assessee furnished details vide its reply dated 19.03.2018 as recorded on pages 5 to 7 of the order of Ld. PCIT. The Ld. PCIT recorded that assessee has no intention to provide complete details and justification of various issues raised in the notice under section 263 of the Act. The Ld. PCIT accordingly set aside the assessment order passed by Assessing Officer and directed the Assessing Officer to pass the fresh assessment order after giving due opportunity to the assessee. Aggrieved by the order of Ld PCIT, the assessee has filed present appeal before this Tribunal.

5. None appeared on behalf of assessee despite the service of notice on more than three occasions by way of registered post

Acknowledgment Due (RPAD). We are satisfy that the assessee is duly served with the notice of hearing of this appeal and avoiding their appearance before Tribunal. This appeal was filed by assessee in 2018 and till now not a single document is filed before this Tribunal, substantiate to various grounds of appeal. Therefore, we left no option except to hear the submission of Ld. Commissioner of Income-Tax - Departmental Representative (Ld. CIT-DR) for the Revenue and to decide the case on the basis of materials available on record. The ld. CIT-DR for the Revenue supported the order passed by Ld. PCIT and he submits that during the hearing of revisional proceedings, the assessee was given ample opportunities to contest its case, however, the assessee failed to substantiate its various issues identified by ld. PCIT, which was not investigated by the Assessing Officer during assessment. Thus, the order passed by Assessing Officer on 30.03.2016 is erroneous and in so far as prejudicial to the interest of revenue. The ld. CIT-DR for the revenue prayed for dismissal of appeal filed by assessee.

6. We have considered the submission of ld. CIT-DR for the Revenue and have gone through the orders of lower authorities. We find that during the revisional proceedings, the Ld. PCIT issued specific show cause notice to the assessee, which we have recorded above. The assessee failed to furnish the required documentary evidences to substantiate the issues identified by ld. PCIT. We find that Ld. PCIT has given sufficient & adequate opportunities before passing his revisional assessment order. The assessee failed to provide without details of development expenses, unsecured loan and the advances despite repeated notice and reminder. We find that in absence of any details sought by ld. PCIT, the order of Assessing Officer was revised by Ld. PCIT. Before us neither the representative have appeared despite service of notice nor filed any written submission. Therefore, in absence of any detailed requirement in support of various grounds of appeal raised by assessee, we do not find any reason to deviate from the finding of ld. PCIT. Accordingly, we confirm the order of ld PCIT that the assessment order is erroneous and in so far as

prejudicial to the interest of revenue. In the result, the various grounds of appeal raised by the assessee are rejected.

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

Order pronounced in the open court on 05/09/2022 and the result was also placed on the Notice Board.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 05/09/2022
Dkp. Out Sourcing Sr.P.S

Copy to:

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

// True Copy //

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

By order

Sr.P.S./Assistant Registrar, ITAT, Surat