

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.523/Ahd/2019
Assessment Year : 2012-13

Jt.CIT (OSD) Circle-4(1)(1) Ahmedabad	v.	Sheetal Infrastructure Pvt. Ltd. 25, 4 th Floor Shukan Mall Nr.Rajasthan Hospital Shahibaug, Ahmedabad-380054 Gujarat
PAN: AAICS 9312 A		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.N. Soparkar, Sr. Advocate and Parin Shah, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 17/01/2024
घोषणा की तारीख /Date of Pronouncement: 19/01/2024

आदेश/O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER

This appeal filed by Revenue is directed against the appellate order dated 22/01/2019 passed by Ld. Commissioner of Income-tax (Appeals)-8, [“CIT(A)” in short] under section 250 of sub-section (6) of the Income-tax Act, 1961(hereinafter called “the Act”) for Assessment Year 2012-13(Appeal No. CIT(A)-8/168/15-16), the appellate proceedings have arisen before Id. CIT(A) from assessment order dated

31.03.2015 passed by Id. Assessing Officer (hereinafter called "the AO") u/s 143(3) of the 1961 Act.

2. It is pertinent to mention here that this appeal filed by Revenue was adjudicated by ITAT , Ahmedabad Bench "B", Ahmedabad vide appellate order dated 08/02/2023. The Department thereafter filed Miscellaneous Application dated 11/07/2023 which was listed as MA No. 60/Ahd/2023, in which Department has averred that Ground No.4 raised by Revenue in its appeal in ITA No. 523/Ahd/2019 for assessment year 2012-13 , relating to claim of deduction of Rs.18,04,810/- by the assessee from the business income was not adjudicated by the Tribunal in ITA No.523/Ahd/2019 for assessment year: 2012-13 vide its order dated 08.02.2023. It was averred in the MA filed by Revenue that the said claim of deduction has arisen from the order effect of the appellate order passed by Id. CIT(A) for assessment year 2009-10. It was claimed that the said expenses were incurred in cash, and not allowable as per provisions of Section 40A(3) of the 1961 Act. The genuineness of these expenses are not established. Therefore , the claim of the expenses of Rs. 18,04,810/- were disallowed by the AO, and added to the income of the assessee. The Id. CIT(A) has allowed the appeal of the assessee for the impugned assessment , and being aggrieved Revenue has filed an appeal with the Tribunal. It is further averred by Revenue in its MA that the Tribunal has not adjudicated this ground of appeal no. 4 in its appellate order dated 08.02.2023 in ITA No. 523/Ahd/2019 for assessment year 2012-13. Thus, it is averred that this is a mistake apparent from record, and prayers were made to rectify the aforesaid mistake apparent from Record. The

Tribunal vide its order in Miscellaneous Application dated 02/08/2023 listed as MA No.60/Ahd/2023 for AY 2012-13 (arising out of ITA No.523/Ahd/2019 for AY 2012-13) held that there is an apparent mistake from the record in the appellate order dated 08.02.2023 passed by the Tribunal in ITA No. 523/Ahd/2023, wherein ground No.4 was not adjudicated by the Tribunal. The relevant paragraph No.4 contained in the order dated 02.08.2023 passed by ITAT, Ahmedabad Bench "B" , Ahmedabad while disposing of Revenue's MA No. 60/Ahd/2023 arising out of ITA no. 523/Ahd/2019 for assessment year 2012-13, read as under:

"4. Head the rival contentions of both the parties and perused the material available on record. Admittedly, the ITAT omitted to adjudicate the ground No.4 raised by the revenue which is a mistake apparent from the record within the meaning of the provisions of section 254(2) of the Act. Consequently, we recall the same for the adjudication of ground No.4 raised by the Revenue in the memo of appeal."

2.1. Thus, the Tribunal has directed in its MA order dated 02/08/2023 that Ground No.4 raised by Revenue in its appeal in ITA No. 523/Ahd/2019 for assessment year 2012-13 is required to be adjudicated. Thus, we are now required to adjudicate Ground No.4 raised by Revenue, which is reproduced as under:

"4. That the ld.CIT(Appeals) has erred in law and on facts in allowing the adjustment of relief granted by the CIT(A) of Rs.18,04,810/-".

2.2. Therefore, this appeal was called for hearing today before the Division Bench "B" of ITAT Ahmedabad Benches, Ahmedabad, for

adjudicating Ground No. 4 raised by Revenue in its appeal in ITA No. 523/Ahd/2019 for assessment year 2012-13.

3. At the outset, the Id. Senior Advocate Shri S. N. Soparkar for the assessee submitted that only ground No.4 is required to be adjudicated as directed by Tribunal in MA order dated 02/08/2023 in MA No. 60/Ahd/2023 arising out of Revenue's Appeal in ITA No. 523/Ahd/2019 for assessment year 2012-13.

4. The Id. CIT-DR, on the other hand, drew our attention to Paragraph No.6.2 (at page No.22) of the assessment order passed by the Assessing Officer , and submitted that assessee has claimed deduction of Rs.18,04,810/- from its business income in its computation of income filed with Return of Income under the title '*less other amounts allowable as deduction CIT(A)-III order effect for Assessment Year 2009-10*'. It was submitted that a search was conducted in the case of assessee-company on 29/08/2008, and during the course of search proceedings, certain loose papers inventoried as Annexure A-6 were seized from the office of the assessee-company at 25, 4th Floor, Shukan Mall, Shahibaug, Ahmedabad. Page Nos.55 to 59 of Annexure A-6 consist of the details of on-money received on sale of Bungalows of Vedika Exotica Project and the said pages also consist certain details of various expenses made in cash by the assessee-company. The assessee has incurred certain expenses which were disallowed by the AO, and the Id. CIT(A) observed that out of the claim of expenses disallowed by the AO , an amount of Rs. 82,60,000/- was incurred in cash towards the purchase of land for V-69

scheme. The ld. CIT(A) observed that it was paid by way of on-money to purchase of plot for V-69 will go to increase the work in progress to the closing stock of project constructed at V-69 scheme , and the same cannot be allowed as an expenditure incurred for earning the income from Vedica Exotica Scheme. It was submitted that the assessee has claimed an expenditure of Rs. 18,04,810/- out of the total amount of Rs. 82,60,000/- during the year under consideration. It was submitted that the claim made by the assessee in its revised return of income based on the order of ld. CIT(A) is not acceptable because, at the first place , the Revenue has not accepted the order of ld. CIT(A) and filed an appeal with ITAT. It was also submitted that as per provisions of section 40A(3) of the I.T. Act, 1961, the expenditure incurred in cash cannot be allowed. It was submitted that it was not claimed as the closing work-in-progress of the corresponding scheme in the year of expenditure i.e. assessment year 2009-10, and, hence, the same cannot now be allowed. Further, genuineness of the expenses are in doubt. It was fairly submitted by ld. CIT-DR that the ITAT has accepted the said claim for the assessment year 2010-11 (ITA No. 17/Ahd/2014, order dated 14.06.2017), assessment year 2011-12(ITA No.2310/Ahd/2015 , order dated 01.02.2018) . It was fairly submitted that even for subsequent assessment year 2013-14, vide common order dated 08.02.2023 in ITA No. 524/Ahd/2019, the ITAT has allowed the claim of the assessee to the tune of Rs. 11,41,532/-. The ld. CIT(A) has also accepted the claim of the assessee for the impugned assessment year, relying on the earlier years ITAT order. On being asked by the Bench, the ld. DR could not bring on record any material to substantiate that the order passed by Tribunal for assessment year 2011-

12 in ITA no. 2310/Ahd/2015 , dated 01.02.2018 was reversed/overtaken by higher judicial forum or even recalled by Tribunal.

5. The Id. Senior Advocate for the assessee submitted that the total expenses of Rs.82,60,000/- were made in cash in the year 2009-10 towards on-money paid for purchase of plot of land , and are to be allowed in an staggered manner over the years based on Revenue realization of the V-69 scheme of Vedica Exotica Scheme. It was submitted that for earlier year assessment year 2011-12, the expenses were allowed based on revenue recognition basis , and there is no reason and justification for not allowing the expenses for the impugned assessment year based on Revenue recognition. Our attention was drawn to the paper-book at page No.170 in paragraph No.7 submitted by the assessee. It was submitted that the expenses claimed were based on the revenue realization with respect to Vedika Exotica Scheme, and in the assessment year 2011-12, 31% of the revenue was realized of the Vedica Exotika scheme, and hence 31% of the total expenses of Rs.82,60,000/- were allowed. Our attention was drawn to Page No.17 of the common order dated 08/02/2023 of the Tribunal passed in ITA Nos.523 & 524/Ahd/2019 for AYs 2012-13 & 2013-14, and it was submitted that Tribunal while adjudicated this issue for AY 2013-14 has allowed the claim of the assessee to the tune of Rs.11,41,532/- based on the allowability of the claim by ITAT for assessment year 2011-12 in ITA No. 2310/Ahd/2015, but due to an apparent mistake/oversight , the Tribunal has not adjudicated this issue for assessment year 2012-13 although

Revenue has raised ground no. 4 in memo of appeal filed with Tribunal to that effect, and it was a pure mistake on the part of the Tribunal in the appellate order passed for AY 2012-13. Thus, it was claimed that this is a case merely of mistake apparent from record and same cannot be allowed.

6. We have heard rival contentions of both the parties and perused the material available on record. We have observed that there was a search and seizure operation conducted by Revenue in the case of assessee on 29.08.2008, and there were certain documents seized by Revenue. It is observed that vide seized document /Annexure-6 at page Nos.55-59/ being seized from the office of the assessee-company at 25, 4th Floor, Shukan Mall, Shahibaug, Ahmedabad, there were details of on money received on sale of Bungalows of Vedika Exotica Project. The said pages also consist of details of various expenses made in cash during the previous year relevant to assessment year 2009-10. The AO disallowed the expenses to the tune of Rs.2,99,61,986/- in the assessment year 2009-10. The Id. CIT(A) while adjudicating appeal for assessment year 2009-10 observed that the assessee has incurred expenses which were disallowed by the AO to the tune of Rs.82,60,000/-in cash towards purchase of plot of land for V-69 scheme. The Id. CIT(A) observed that this amount will go to increase the work in progress to the closing stock of project constructed at V69 scheme and the same cannot be allowed as an expenditure incurred for earning the income from Vedica Sotica Scheme. The assessee started construction and the scheme was known as Vedika Habitat. It is observed that the said amount of Rs.82,60,000/- is allowed

as deduction towards expenses by the Tribunal in an staggered manner based on the Revenue realization , and Tribunal has allowed Rs.25,60,600/- in assessment year 2011-12 out of total amount of Rs. 82,60,000/- incurred by the assessee in cash in assessment year 2009-10, which constituted 31% of the Revenue realization of Vedika Exotica Scheme vide order dated 01.02.2018 in ITA No.2310/Ahd/2015 for AY 2011-12. The Tribunal has further allowed a sum of Rs.11,41,532/- for AY 2013-14 vide its order in ITA No.524/Ahd/2019 dated 08/02/2023(common order of ITAT, Ahmedabad Bench for assessment year 2012-13 and 2013-14), based on Revenue realization of Vendika Exotica Scheme . The Id. CIT(A) has also granted relief to the assessee for the impugned assessment year by following the appellate orders of the earlier assessment year. We have observed that the Tribunal while passing the appellate order in ITA No.523/Ahd/2019 for AY 2012-13 has not adjudicated this issue which was specifically raised by Revenue in its appeal in ITA no. 523/Ahd/2019 vide ground no. 4. The Tribunal vide its order in MA No.60/Ahd/2023(arising out of ITA no. 523/Ahd/2019) dated 02/08/2023 has recalled the order dated 08/02/2023 of the Tribunal only restricted to adjudication of Ground No.4 raised by the Revenue in ITA No.523/Ahd/2019 for AY 2012-13. We have carefully perused the entire material available on record and we are of the view that the claim of deduction of expenses of Rs.18,04,810/- filed by the assessee based on the appellate order passed by Id. CIT(A) for assessment year 2009-10 is to be allowed as Tribunal in earlier years have allowed the said claim based on revenue realization of Vedika Exotika Scheme. The Id. CIT(A) has also allowed the claim of the assessee for the impugned

assessment year based on the orders passed by Tribunal in earlier years. There is no material on record that the order of the Tribunal for earlier years were recalled or overturned by higher judicial forum. Even for assessment year 2013-14, the Tribunal has allowed the claim of the assessee. There is no material on record to suggest that the claim of the assessee is not based on revenue recognized during the year under consideration of Vedika Exotica Scheme(V-69). The principle of res judicata are not applicable to income-tax proceedings , but consistency needs to be followed in the tax-proceedings. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT(1992) 193 ITR 321(SC). Keeping in view consistency of the matter, we allow this expenditure of Rs.18,04,810/- as claimed by the assessee, and dismissed Ground No. 4 raised by Revenue in its Appeal in ITA no. 523/Ahd/2019 for assessment year 2012-13. Thus, Ground No.4 raised by the Revenue in ITA No.523/Ahd/2019 for AY 2012-13 stands dismissed. We order accordingly.

7. In the result, the appeal of the Revenue , so far as Ground no. 4 raised in memo of appeal filed with Tribunal is concerned , stands dismissed.

Order pronounced in the Open Court on 19 January, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 19 /01/2024

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-8
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाइल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad