

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 589/Ahd/2023
Assessment Year 2016-17**

Ronak Ceramic India Ltd., Mehsana PAN: AAACR7297P (Appellant)	Vs	The ITO, Mehsana (Respondent)
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**Assessee by: Shri Sumit Shingala, A.R.
Revenue by: Shri B.P. Makwana, Sr. D.R.**

Date of hearing : 05-02-2024
Date of pronouncement : 08-03-2024

आदेश/ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:-

This is an appeal filed against the order dated 30-05-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2016-17.

2. The only grievance raised by the assessee is that Id. CIT(A) erred in confirming the addition made by the Assessing Officer for Rs. 7,67,802/- on account of sale of land and building.

2.1 The Assessing Officer during the assessment proceedings found that the assessee has received compensation on the compulsory acquisition of capital assets amounting to Rs. 1,00,09,775/- only. But the assessee has shown short term capital gain of Rs. 92,41,973/- instead of showing the gross amount of Rs. 1,00,09,775/- as its capital gain. On questions by the Assessing Officer, the assessee failed to make any compliance. Therefore, the Assessing Officer treated the difference of Rs. 7,67,802/- (Rs. 1,00,09,775/- minus Rs. 92,41,973/-) as short-term capital gain and added to the total income of the assessee.

3. Aggrieved by the preferred an appeal to the Id. CIT(A). The assessee the Id. CIT(A) contended that it has shown the impugned assets being land and building as part of the block of asset and claimed the depreciation thereon. Therefore, the written down value of Rs. 7,67,802/- should be allowed as a deduction against the compensation received.

4. However, the Id. CIT(A) disagreed with the submission of the assessee on the reasoning that the land cannot be made part of the block of assets and therefore the question of claiming the depreciation does not arise. Thus, the Id. CIT(A) confirmed the order of the Assessing Officer.

5. Being aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

5.1 The Id. AR before us filed a paper book running from pages 1 to 111 and among other contentions submitted that the land was acquired in the year 1985 and thereafter the building was constructed on such land. As per the assessee, the compensation received for Rs. 1,00,09,775/- comprising of the following:

Award for:	Amount (Rs.)
Land	66,57,235/-
Construction over the land	33,52,540/-
(See Page 47) Total	1,00,09,775/-

5.2 The Id. AR further contended that even the compensation received by the assessee towards the land is excluded from the income shown by the assessee under the head short term capital gain, then also the assessee is entitled for the deduction the cost of acquisition of the land in dispute along with indexation. But the Id. CIT(A) has not done so.

6. Similarly, it was also contended that the assessee has offered short term capital gain to tax @ 30% but if it bifurcates the compensation based on long term capital asset and short-term capital asset separately being land and building, then the tax liability of the assessee will reduce drastically. But the Id. CIT(A) has not

done so. Accordingly, the Id. AR prayed to set aside the finding of Id. CIT(A).

7. On the other hand, the Id. Departmental Representative vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note a defect in the order of Id. CIT(A) in so far as the benefit of cost of acquisition with respect to the land has not been provided as mandated under the provisions of law. As such, we note that the Id. CIT(A) on the one hand is denying the benefit of a deduction representing the written down value of Rs. 7,67,802/- and on the other hand, the Id. CIT(A) has not given the benefit of acquisition of land along with the indexation cost. Thus, we are of the view that such an order passed by the CIT(A) is not based on the provisions of law.

8.1 With prejudice to the above, we note that if we calculate the capital gain by the method adopted by the Id. CIT(A), we note that the tax liability of the assessee shall reduce further as evident below:

Particulars	STCG if sec. 50 is applicable	LTCG If Sec. 50 is not applicable
Total Consideration	1,00,09,775.00	1,00,09,775.00
Less: WDV	-7,67,802.00	N/a.
Gain	92,41,973.00	1,00,09,775.00
Tax Rate Applicable	@30%	@ 20%

Resultant Tax	27,72,591.90	20,01,955.00
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8.2 In view of the above, we hold that the order passed by Id. CIT(A) is not sustainable and accordingly, we direct the Assessing Officer to delete the addition made by him. Hence, the grounds of appeal of the assessee are hereby allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08-03-2024

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCCOUNTNAT MEMBER

Ahmedabad : Dated 08/03/2024

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