आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' B'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं**./ITA Nos. 729, 718 & 719/AHD/2023**

निर्धारण वर्ष/Asstt. Years: (2014-2015, 2015-2016 & 2016-2017)

D.C.I.T, Central Circle-2, Vadodara.	Vs.	Anil Bholabhai Patel, A 1-2, Darshan Park Society, VIP Road, Karelibaug, Vadodara-390018. **PAN: ACTPP2509G**

(Applicant)		(Respondent)

Revenue by	:	Shri Sudhendu Das, CIT DR
Assessee by	:	Smt. Arti N Shah, A R

सुनवाई की तारीख**/Date of Hearing : 21/02/2024**
घोषणा की तारीख **/Date of Pronouncement: 08/03/2024**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned three appeals have been filed at the instance of the revenue against the orders of the Commissioner of Income Tax (Appeals), Vadodara arising in the matter of order passed under Section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2014-15 to 2016-17.

First, we take up ITA No. 729/AHD/2023 for AY 2014-15, an appeal by the Revenue.

2. The inter-connected issue raised by the revenue in ground numbers 1 and 2 is that the Ld. CIT(A), erred in treating the income disclosed by the assessee as the income under the head capital gain against the finding of the AO and thereby directing the AO to allow the exemption u/s 54F of the Act after verification.

3. The necessary facts are that the assessee in the present case is an individual and has declared income under the head property, salary & capital gain and share of profit from the partnership firm. The assessee during the year has sold many properties and shown long term capital gain of Rs. 2,14,07,457/- only. However, the AO was of the view that the assessee has carried out activities of land selling which is adventure in the nature of trade. Therefore, the AO re-worked out the income from the sale of land under the head business and profession amounting to Rs. 2,14,07,457/- and the AO further denied the benefit of deduction claimed u/s 54F of the Act.

4. On appeal, the Ld. CIT(A) held that the income on the sale of land is to be charged under the head capital gain and accordingly the AO was further directed to allow the exemption claimed by the assessee under the head 54F of the Act after necessary verification as per the provision of law.

5. Being aggrieved by the order of the Ld. CIT(A) the revenue is in appeal before us.

6. Both the Ld. DR and the Ld. AR before us vehemently supported the order of the authorities below as favourable to them.

7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the identical issue arose

in the assessment year 2012-13 in ITA No. 371/AHD/2016 in the own case of the assessee which has been decided by the ITAT in favour of the assessee vide order dated 27/10/2016. The relevant extract of the order is reproduced as under:

> *We have carefully considered the rival submission and assessment order as well as the order of the CIT(A) appeal against and also various doucments and referred to at the time of hearing and caselaws cited. The common issue that transcends in all the present appeals is whether gains arising on sale of land and other properties by the assesee in the relevant assessmetn years is required to be taxed under the head "capital gains" as offered by the assessee or is to be treated as"business income" of the assessee. The issue involved is essentially factual in nature. It is the case of the assessee that the land and other properties were no correction and acquired/purchased over several years and held as "capital asset" in the nature of investment. From the written submissions of the assessee as extracted by the CIT(A) in his order, we note that there a considerable time lag between the purchase and the sale of land and other properties. Simultaneously, the land/properties have been declared as "capital investment" by the assessee all along. We also take note of the fact that some of the properties were let out and rent thereon was earned as a yield on such investments. Agricultural income has been consistently declared year-after-year on agricultural land so held before its sale. The non-agricultural land so held were shown as investment and subjected to wealth tax being capital asset. On perusal of the written submissions as reproduced by the CIT(A) in para-6 of his order, we note that the land/properties were purchased and held for several years in many cases before its sale. Coupled with this, we also take note of the fact that assessee has large capital of its own at its disposal which is far in excess of the corresponding investments made in land/properties over years. On cumulative reading of these glaring facts, we fail to comprehend the action of the Revenue in holding capital gains earned on sale as declared to be a business venture. It is manifest that the AO as well as CIT(A) misdirected themselves in law and on facts in holding the land/properties to be in the nature of trading asset merely on the ground that some of the agricultural land were converted into non-agricultural land and some agreements were entered for the development of the land in the year under appeal acquired and held for decades in many cases. We find considerable weight in the plea of the assessee that intention at the time of purchase to hold impugned land/properties as a capital asset is manifest on records. The balance-sheet filed by the assessee over years, wealth-tax returns filed by the assessee, adequacy of its own capital clearly underscore the intention of the assessee to hold land/properties as capital asset as claimed. Inextricably, we also take note of the plea of the assessee that he is a co-owner of impugned land/properties holding certain percentage of ownership-rights therein and the claim of the land/properties as capital asset has been accepted by the Revenue in the hands of other co-owners in the assessment proceedings u/s.143(3) of the Act. This fact has remained uncontroverted. We also note that having regard to the facts noted above, the Coordinate Bench of the Tribunal in assessee's own case relevant to AY 2004-05 has decided the issue in favour of the assessee. Thus, we find that the action of the AO was simply guided by the considerations of revenue alone outside the bounds of rationality. At this juncture, we have also carefully perused the order of the Coordinate Bench of Tribunal in assessee's own case for AY 2006-07 where adverse view has been taken. However, we take note of the fact that the Coordinate Bench of the Tribunal in the matter for AY 2006-07 has taken a different view in departure with the earlier order of the Coordinate Bench relevant to Asstt. Year 2004-05 mainly on the premise that the agricultural income has not been declared on the agricultural land held in that year. As pointed out on behalf of the assessee, agricultural income has been duly reported in all assessment years except AY 2006-07. Therefore, the facts prevailing in the captioned appeals are proximate with AY 2004-05 where the facts are found to be on same pedestal and distinguishable qua AY 2006-07. Thus, the facts prevailing in AY 2007- 08 are somewhat different. Therefore, respectfully following the decision of the Coordinate Bench of the Tribunal in AY 2004-05*

and having regard to the totality of the facts and circumstances noted above, we find considerable merit in the plea of the assessee. We accordingly hold that land/properties were held by the assessee as capital asset before its sale and consequential gains arising on sale thereto is chargeable under the head of "capital gains". Accordingly, the AO is directed to consider the gains arising on sale of land/properties under the head "capital gains". In the light of the facts noted above, the AO is further directed to de novo consider the relief as and where claimed by the assessee u/s.54B relevant to assessment years under appeals in accordance with law after affording requisite opportunity to the assessee. We accordingly set aside the issue towards eligibility of relief claimed v/s.54B of the Act back to the file of the Assessing Officer for fresh consideration.

12. Thus, the appeal of the Assessee in ITA No.371/Ahd/2016 relevant to A.Y 2012-13 is partly allowed in terms of directions noted above.

7.1 Before us no material has been placed on record by the Revenue demonstrating any contrary decision of the Higher Judicial Authorities. Likewise, the Revenue has not placed any material on record pointing out any distinguishing feature in the facts of the case for the year under consideration and that of the earlier year cited above. Thus, respectfully following the order of Co-ordinate Bench discussed above, the ground of appeal of the revenue is hereby dismissed.

8. The next issue raised by the revenue in ground number 3 is that the Ld. CIT(A) erred in deleting the addition made by the AO for Rs. 1,89,412/- under the provisions of section 14A r.w.Rule 8D of Income Tax Rules.

9. The assessee in the year under consideration has shown exempt income amounting to Rs. 2,03,05,814/- but failed to make any disallowance against such exempt income in pursuance to the provisions of section 14A r.w. Rule 8D of Income Tax Rules. Accordingly, the AO invoked the relevant provision and made the disallowance as under:

Sr.no	***Particulars***	***Amount (in Rs.)***
1	*Direct Expenses*	*Nil*
2.	*Interest Expenses*	*61364*
3.	*Administrative Expenses*	*128048*
	Total	*189412*

9.1 The AO, in view of the above, disallowed the expenses under the provision of section 14A r.w Rule 8D of Income Tax Rules and added to the total income of the assessee.

10. Aggrieved assessee preferred an appeal to the Ld.CIT(A) who deleted the addition made by the AO by observing as under:

> *10.3 Ground of appeal 3 is against the action of the AO to disallow a sum of Rs.1,89,412/- out of the total interest paid of Rs. 22,60,711/- by applying sec. 14A r.w rule &D. The AO had disallowed certain sum of interest paid to depositors on the ground that the deposits were utilised for giving loans and advances to the family members without charging any interest Therein. The appellant has given a table showing that the amounts were invested in Partnership firms and from the same it had carried interest amounting to Rs.27,51,244/- It has also earned interest of Rs. 3,16,677/- from the bank which is reflected in the computation of income. Thus, total interest income was Rs. 30,67,921/- against which interest paid was Rs.22,60,711/- Further the appellant submitted that it had invested Rs.3,18,02,876/-in fixed assets out of which rental income of Rs. 70,15,658/- was earned. Thus, total investment in firms and immovable properties comes out to be Rs.5,64,19,912/- against which interest bearing lean taken is Rs.1,88,39,258/-. Thus, he questioned the addition made by the AO.*
>
> *10.3.1 There is merit in the argument of the appellant, he has earned more interest than he has paid Further, the amount of interest-bearing loan is much lower than the investments from which income is earned. Hence, there was no justification for the disallowance as made by the AO is directed to delete the addition of Rs.1,89,412-. Ground of appeal 3 is allowed.*

11. Being Aggrieved by the order of the Ld. CIT(A) the Revenue is in appeal before us.

12. Both the Ld. DR and the Ld. AR before us vehemently supported the order of the authorities below as favourable to them.

13. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the issue in the present case revolves against the disallowance of interest and administrative expenses in pursuance to the provisions of section 14A r.w. Rule 8D of Income Tax Rules. Undeniably, the interest income shown by the assessee at Rs. 30,67,921/- exceeds the total amount of interest expenses amounting to Rs. 22,60,711/- and therefore, no disallowance of interest expense is warranted.

13.1 However, regarding the administrative expense we note that the assessee has not given any explanation why such expenses should not be disallowed. Admittedly, assessee earned exempted income not chargeable to tax and therefore the expenses incurred by the assessee against such exempt income cannot be allowed while calculating the income chargeable to tax. The primary onus lies with the assessee to demonstrate that no administrative expense has been incurred by the assessee. However, from the order of the authorities below, we find that such an onus has not been discharged by the assessee. Therefore, we are of the view that the administrative expense against the exempted income needs to be worked out under the provisions of rule 8D of Income Tax Rules in the absence of any justification from the assessee. Accordingly, we confirmed the disallowance at Rs. 1,28,048/- only representing the disallowance of administrative expense as made by the AO. Hence, ground of appeal of the revenue is hereby partly allowed.

14. In the result, the appeal filed by the revenue is hereby partly allowed.

Coming to ITA No. 718/Ahd/2023, an appeal by the Revenue for AY 2015-2016

15. The solitary issue raised by the revenue in the ground of appeal is that the Ld. CIT(A) erred in treating the income disclosed by the assessee as the income under the head capital gain against the finding of the AO and thereby directing the AO to allow the exemption u/s 54F of the Act after verification.

16. At the outset, we note that the issue raised by the Revenue in its grounds of appeal for the AY 2015-16 is identical to the issue raised by the Revenue in ITA No. 729/Ahd/2023 for the assessment year 2014-15. Therefore, the findings given in 729/Ahd/2023 for the AY 2014-15 shall also be applicable for the year under consideration i.e. AY 2015-16. The ground appeal of the Revenue for the

assessment 2014-15 has been decided by us vide paragraph No.7 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the year under consideration i.e. AY 2015-16. Hence, the ground of appeal filed by the Revenue is hereby dismissed.

17. In the result, the appeal of the Revenue is hereby dismissed.

Coming to ITA No. 719/Ahd/2023 an appeal by the Revenue for A.Y. 2016-17.

18. The solitary issue raised by the revenue in the grounds of appeal is that the Ld. CIT(A) erred in treating the income disclosed by the assessee as the income under the head capital gain against the finding of the AO and thereby directing the AO to allow the exemption u/s 54F of the Act, after verification.

19. At the outset, we note that the issue raised by the Revenue in its grounds of appeal for the AY 2016-17 is identical to the issue raised by the Revenue in ITA No. 729/Ahd/2023 for the assessment year 2014-15. Therefore, the findings given in 729/Ahd/2023 for the assessment year 2014-15 shall also be applicable for the year under consideration i.e. AY 2016-17. The ground appeal of the Revenue for the assessment 2014-15 has been decided by us vide paragraph No. 7 of this order against the Revenue. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2014-15 shall also be applied for the year under consideration i.e. AY 2016-17. Hence, the ground of appeal filed by the Revenue is hereby dismissed.

20. In the result, the appeal of the Revenue is hereby dismissed.

21. In the combined results, out of the three appeals filed by the Revenue, the ITA bearing No. 729/Ahd/2023 for AY 2014-15 is partly allowed whereas ITA bearing Nos. 718-719/Ahd/2023 for AY 2015-16 & 2016-17 are hereby dismissed.

Order pronounced in the Court on 08/03/2024 at Ahmedabad.

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 08/03/2024
Manish, Sr. PS