

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 296/Ahd/2023

निर्धारणवर्ष/Assessment Year: 2009-10

M/s. Shakti Infra, FF/14, Shreem Complex, Opp. Mahindra Gujarat Tractors, Vishvamitri, Vadodara, Gujarat - 390011 PAN : ABMFS 3957 M	Vs.	Income-Tax Officer, Circle 1(2)(1) Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Ms. Urvashi Shodhan, AR
Revenue by :		Shri Sushil Kumar Katiar, Sr DR

सुनवाई की तारीख/Date of Hearing : 01.04.2024
घोषणा की तारीख /Date of Pronouncement: 22.05.2024

आदेश/ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 28.02.2023, passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2009-10.

2. The facts, in brief, are that the assessee is a partnership firm and is engaged in the business of construction and development. In the present case, the proceedings under section 147 of the Act were initiated by issuing a show-cause notice under section 148 of the Act dated 30th March 2016. The assessment was finally framed under section 143(3) read with section 147 of the Act dated 16th December 2016 after making the following addition:

Sr. No.	Particulars	Amount (Rs.)
1	Addition on account of unexplained investment u/s 69A of the I.T. Act	1,73,00,000.00
2	Addition on account of disallowance of expenses	25,24,954.00
	Total	1,98,24,954.00

3. Aggrieved, the assessee preferred an appeal to the learned CIT(A) who confirmed the order of the AO on the reasoning that there was no submission filed by the assessee in response to various notices issued to it (the assessee). As such, in the absence of any assistance/reply from the side of the assessee, the learned CIT(A) was pleased to confirm the order of the AO.

4. Being aggrieved by the order of learned CIT(A), the assessee filed appeal before ITAT, Ahmedabad. The learned AR filed application for the additional evidence demonstrating that the expenses in dispute were incurred through banking channel. As such the learned AR contended that the protective addition made in the hands of the assessee has already been subject matter of addition in the hands of the 5 partners out of total 8 partners. Against the addition made in the hands of the partners, there was no appeal preferred by the partners. Therefore, it was submitted by the learned AR that once substantive addition has been confirmed in the hands of the partners, there cannot be any reason to sustain the addition in the hands of the present assessee. As such, the protective addition is liable to be deleted. The learned AR further submitted that there were no proceedings initiated in respect of the remaining 3 partners and therefore no addition was made in their hands. As per the learned AR, why the proceedings were not initiated against the 3 partners is best known to the Revenue. It is because all the necessary facts were already available on record with the

revenue for making the additions on a substantive basis in the hands of the remaining 3 partners. Regarding the other expenses, being compound wall, advertisement expenses and site expenses, the learned AR submitted that all these expenses were incurred through the banking channel and therefore the same cannot be disallowed in entirety. As per the learned AR, the business of the assessee has been closed and therefore it is not possible for the assessee to produce the records except the bank statement demonstrating the payment made with respect to the expenses discussed above. As such, it was prayed by the learned AR that any reasonable *ad-hoc* disallowance for want of documents can be made instead of making the disallowance in entirety.

5. On the contrary, the learned DR contended that there is no information available on record whether the addition made in the hands of the partners of the assessee has been challenged by them before the higher forum. Therefore, on this reasoning the addition made on protective basis in the hands of the assessee cannot be deleted. Regarding the other expenses, the learned DR submitted that the bank statement filed by the assessee demonstrating the payment incurred for the expenses through banking channel was not available before the authorities below. Therefore, the same cannot be taken into consideration while adjudicating the issue without confronting the same to the authorities below. The learned DR also opposed to give further opportunity to the assessee by restoring the issue to the file of the authorities below for fresh adjudication in the light of the arguments advanced by the learned AR for the assessee as the assessee was already given opportunities by the learned CIT(A) which were not availed.

6. The ITAT, vide order dated 28.02.2024 in ITA No. 296/Ahd/2023, held that from the order of the learned CIT(A), it was noted that the assessee had

submitted before Ld. CIT(Appeals) that substantive addition made in the hands of partners have been admitted by the partners and therefore the protective addition in the hands of the assessee is not sustainable. However, ITAT observed that the learned CIT(A) has not considered the statement of facts produced by the assessee before learned CIT(A). The provisions of section 250(6) of the Act require the learned CIT(A) to dispose of the appeal filed by the assessee by way of speaking order with reasoning. The ITAT held that the learned CIT(A) should have considered the aspect that once substantive additions have been confirmed in the hands of the partners and in light of these facts, in the interest of justice, should have given appropriate observations and should not have dismissed the appeal of the assessee *in limine*. Accordingly, in the interest of justice, the ITAT restored this issue to the file of the learned CIT(A) for fresh adjudication, as per the provisions of law. Hence, the appeal of the assessee was allowed by ITAT for the statistical purposes.

7. Thereafter, the assessee filed MA on the ground that ITAT inadvertently omitted to take into consideration the ground relating to addition in hands of the assessee on account of disallowance of expenses related to compound wall, advertisement and site expenses. The original order passed by ITAT was accordingly recalled to adjudicate with respect to the ground related to allowability of other expenses. The Ld. Counsel for the assessee reiterated the submissions made at the time of original proceedings before ITAT, which have also been noted by ITAT in its original order. We observe that the Ld. DR had earlier submitted that the bank statement filed by the assessee demonstrating the payment incurred for the expenses through banking channel was not available before the authorities below. Therefore, the same cannot be taken into consideration while adjudicating

the issue without confronting the same to the Authorities below. Accordingly, looking into the instant facts, since the primary issue with regards addition on protective basis is before the Ld. CIT(A) for its consideration, we are of the view that the issue related to these expenses may also be considered by Ld. CIT(A). The assessee may file necessary supporting documents/evidences in support of such expenses. We observe that certain expenses may also be pre-commencement/pre-operative in nature and the assessee may bring necessary supporting evidences to substantiate whether any part of such expenses have been capitalized or not.

8. In the result, the assessee appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 22.05.2024 at Ahmedabad.

Sd/-

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Ahmedabad; Dated 22/05/2024

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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)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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