

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Siddhartha Nautiyal, Judicial Member  
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 1124/Ahd/2023  
Assessment Year 2014-15**

The DCIT, Central Circle-1(1), Ahmedabad (Appellant)	Vs	Navratna Organisers and Developers Pvt. Ltd., Ahmedabad PAN: AAACN5181E (Respondent)
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**Assessee by: Ms. Amrin Pathan, A.R.  
Revenue by: Shri Sushil Kumar Katiar, Sr. D.R.**

Date of hearing : 14-05-2024  
Date of pronouncement : 04-06-2024

**आदेश/ORDER**

**PER : NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:-**

This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax, CIT(A)-11, Ahmedabad dated 10/10/2023 for the assessment year 2014-15.

2. The Revenue has taken the following grounds of appeal:-

*“a) In the facts and on the circumstances of the case, Ld. CIT(A) erred in directing to delete the addition of Rs.5,08,94,301/- on account of estimation of profit @8% of WIP relied upon decision of Jurisdictional ITAT in ITA No. 1098 & 1099/Ahd/2019 dated 20.12.2021 in appellant's own case. The decision of Hon'ble ITAT has already been challenged and an appeal was already filed before the Hon'ble Gujarat High Court vide Tax appeal No. 384 & 387 of 2022.*

*b) In the facts and on the circumstances of the case, Ld. CIT(A) erred in directing to restricted the addition of Rs.55,80,775/- on account of disallowance u/s.14A r.w.r. 8D to Rs.5,12,548/- relied upon decision of Jurisdictional High Court as well as tribunal orders. The Ld.CIT(A) has not appreciated the CBDT Circular No.5/2014 dated 11.02.2014.”*

3. The first ground taken by the Revenue pertains to addition of Rs.5,08,94,301/- on account of estimation of profit @ 8% of WPI. The brief facts of the case are that return of income for assessment year 2013-14 was filed on 27-11-2024 declaring total income of Rs. 79,10,536/-. The assessee company was engaged in the development of various projects and earning certain amount of development fees. The company had entered into development agreement with other company/society pursuant to which it was entrusted with job of construction and development of various properties owned by the respective company/society. The Assessing Officer noticed that the assessee was not following percentage completion method and the correct amount of profit was not offered to taxation. The Assessing Officer, therefore, made addition by estimating the profit @ 8% of WPI. The addition was made on the basis of increase in WPI as reflected at the year end and the quantum of addition was Rs. 5,08,94,301/-.

4. Aggrieved with the order of the Assessing Officer, the assessee went into appeal before the Id. first appellate authority. The Id. CIT(A) deleted

the addition by relying upon the order of the ITAT in the assessee's own case for assessment year 2005-06 and assessment year 2013-14 in ITA Nos. 1098 and 1099/Ahd/2019 dated 20-12-2021. The Id. Departmental Representative submitted that the decision of Hon'ble ITAT in ITA Nos. 1098 and 1099/Ahd/2019 was challenged by the Department and the appeal was filed before the Hon'ble Gujarat High Court vide Tax Appeal No. 384 and 387 of 2022. The Id. Authorized Representative on the other hand submitted that this issue was already adjudicated by the Id. ITAT in assessee's own case in the earlier years which was rightly followed by the Id. CIT(A).

5. We have heard both the sides and gone through order of the revenue authorities. We have also gone through the order of the ITAT in assessee's own case cited (supra) for the assessment year 2005-06 and 2013-14. We find that the Co-ordinate Bench of the Tribunal has examined and discussed the issue in length for the first time in ITA No. 2634/Ahd/2011 and 1875/Ahd/2013 for assessment year 2008-09 and 2009-10 respectively which was decided on 23-01-2019. The Tribunal had come to the conclusion that the assessee was the developer, and the WPI did not belong to it. The assessee was consistently following mercantile system of accounting and receipts in the form of development fees were recognized on completion of project. The Assessing Officer without any basis had construed that the WPI belonged to the assessee. Accordingly, the Tribunal had confirmed the claim of the assessee and the Id. CIT(A) in the current year had followed the order of the Tribunal. In fact the Ld. CIT(A) has reproduced the order of the ITAT in entirety in order to properly appreciate the facts of the case. In view of

these facts, we do not find any reason to deviate from the finding of the Id. CIT(A) which was based on the finding of the ITAT in the assessee's own case cited supra. We, therefore, upheld and confirm the deletion of addition on account of estimation of profit @ 8% of WPI. The ground no. 1 of the Revenue is rejected.

6. The second ground taken by the Revenue pertains to restriction of addition of Rs. 55,80,775/- made u/s. 14A rwr 8D to Rs. 5,12,548/- by the Id. CIT(A). In the course of assessment proceeding the Assessing Officer noticed that assessee had made substantial investment in assets that yielded tax exempt income. The assessee had claimed that no expense was incurred in relation to such investment. The Assessing Officer, however, found that the fund of the assessee was mixed bag of interest bearing fund and interest free fund. He, therefore, worked out the disallowance of Rs. 55,80,775/- u/s. 14 rwr 8D. In first appeal, the Id. CIT(A) restricted the disallowance u/s. 14A to Rs. 5,12,548/- i.e. to the extent of exempt income earned during the year. The Id. Departmental Representative submitted that the order of the Id. CIT(A) was not in accordance with CBDT Circular No. 5/2014 dated 11-02-20214. The Id. Authorized Representative on the other hand submitted that Id. CIT(A) had rightly restricted the disallowance u/s. 14A to the extent of exempt income earned, following the decision of Apex Court and the Jurisdictional High Court.

7. We have carefully considered the rival submissions. It is found that this issue was involved in the earlier years as well wherein it was held that the assessee has sufficient interest free funds in excess of investment made

for earning tax free income. In any case, the disallowance u/s. 14A was required to be restricted to the exempt income earned, as held by the Hon'ble Supreme Court in the case of *PCIT vs. Caraf Builders and Construction Pvt. Ltd.* 112 taxmann.com 322. The ld. CIT(A) had rightly restricted the disallowance to the extent of exempt income earned by the assessee following the decision of the Apex Court and the Jurisdictional High Court. We do not find any infirmity with the order of the ld. CIT(A). Accordingly, the order of the CIT(A) is confirmed and the ground taken by the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 04-06-2024

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(NARENDRA PRASAD SINHA)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 04/06/2024**

**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