

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA No.1181/PUN/2023
Assessment Year : 2011-12**

Ms Sunnygold Wineries Pvt. Ltd. Factory Gat 163-2, Sanaswadi, Tal. Shirur, Dist. Pune – 412208	Vs.	DCIT, Circle – 6, Pune
PAN : AACCS6640R		
(Appellant)		(Respondent)

Assessee by : Shri Suhas Bora
Department by : Shri Sourabh Nayak, Addl.CIT
Date of hearing : 29-05-2024
Date of pronouncement : 05-06-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 13.09.2023 of the CIT(A), Pune-11 relating to assessment year 2011-12.

2. This is the second round of litigation before the Tribunal. Earlier, the Tribunal vide order dated 18.07.2018 has restored the matter to the file of Ld. CIT(A) with certain directions. Accordingly, the Ld. CIT(A) passed the order dated 13.09.2023. The grounds raised by the assessee are as under:

1. *The learned Commissioner of Income Tax (Appeal) erred in disallowing the brokerage charges of Rs.77,24,632/- paid on sale of the factory land and building.*

2. *The learned Commissioner of Income Tax (Appeal) erred in disallowing advertisement expenses to the extent of Rs.2,00,00,000/-.*
3. *The learned Commissioner of Income Tax (Appeal) erred in disallowing provision of sales return to the extent of Rs.2,00,00,000/-.*
4. *The learned Commissioner of Income Tax (Appeal) erred in disallowing in repairs and maintenance expenses to the tune of Rs.4,98,500/-*

3. However, the Ld. Counsel for the assessee at the time of hearing did not press ground No.2, 3 and 4 for which the Ld. DR has no objection. Therefore, the said grounds are dismissed as 'not pressed'. So far as the ground No.1 is concerned, the same relates to the order of Ld. CIT(A) in confirming the disallowance of brokerage charges of Rs.77,24,632/-.

4. Facts of the case, in brief, are that the assessee filed its return of income on 28.09.2011 declaring total income of Rs.3,04,16,780/-. In the computation of total income, the assessee has computed long term capital gain of Rs.8,75,62,937/- after claiming brokerage charges of Rs.77,24,632/-. The Assessing Officer in his order disallowed the same by observing as under:

“6. Disallowance of Brokerage charges against the sale deed of Rs.77,24,632/-

6.1 *From perusal of the working of Long Term Capital Gains submitted by the assessee for A.Y. 2011-12, it is observed that it has claimed the brokerage of Rs.77,24,632/-. Since the Long Term Capital Gain itself was considered in A.Y. 2010-11 there is no question of allowing the brokerage claimed in the A.Y. 2011-12. The issue is discussed with the learned AR.*

6.2 *Therefore, I am of the considered view that the brokerage of Rs.77,24,632/- should be considered on protective basis while computation. The considered brokerage of Rs.77,24,632/- will be subject to rectification upon the receipt of the appellate order.”*

5. In appeal, the CIT(A) dismissed the appeal filed by the assessee by observing as under:

“9. The ground no.2 is regarding the disallowance of brokerage charges paid on sale of factory land and building. The assessee claimed an amount of deduction of Rs.77,24,632/- towards brokerage charges while computing the LTCG. The Assessing Officer held that since the LTCG itself is being considered in A.Y. 2010-11, there is no question of allowing the said deduction and accordingly, the said issue was considered on protective basis, subject to rectification upon receipt of appellate order.

*10. During the appellate proceedings, the appellant vide submission dated 23/05/2023 has withdrawn the above ground of appeal. The ground no.2 raised by the appellant is accordingly **DISMISSED** as withdrawn. It may, however, be stated that since the said disallowance was confirmed by the then CIT(A) in AY 2010-11 and the Hon’ble ITAT has not granted any relief to the appellant on this issue, therefore, the appellant shall not be eligible for any deduction on account of brokerage charges.”*

6. Aggrieved with such order of CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to paras 20 and 21 of the order of Tribunal which reads as under:

“20. With regard to ground No. 4, we find the claim of assessee pertains to payment of brokerage Rs.77,24,632/-in the year 2011-12 and other development expenditure. This amount consists of Rs.27,65,500/- and balance amount is incurred for development of the land. The assessee claimed the said expenses exclusively in connection with the transfer of the asset and claimed the expenditure amount is allowable u/s. 48(i) of the Act. The Assessing Officer and CIT(A) dismissed the claim of assessee stating that the assessee failed to produce any evidence qua the services rendered by the broker. With regard to the expenses incurred on land development, the Assessing Officer and CIT(A) was of the view that sale deed in question does not speak of any improvement to the land being desired by the buyer. Accordingly, assessee is not entitled to grant any relief on account of expenses that are claimed to have been incurred on transfer.

21. On hearing both the sides on this issue, we find this aspect is interlinked to ground No. 3 relating to the correct assessment year of taxation of capital gains. We have held that the transfer of the land on 18.09.2009 is not complete

considering the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Vithalbhai P. Patel (supra.). In our view, this issue requires scrutiny of the facts relating to services rendered by the broker on one side and furnishing particulars of expenditure incurred in development of the land by assessee on other side. In any case, this aspect becomes relevant for the assessment year 2011-12 where gains become tenable as offered by the assessee. The assessee filed written submissions in this regard and para 3 is relevant. The same is extracted as under:

“3) The assessee submitted that if the capital gains are held to be taxable in A.Y. 2011-12, the question of allowing the deduction of Rs.77,24,632/- will arise only in that year and not in A.Y.2010-11. This is because, if the income by way of capital gains itself is not taxed in this year, the question of allowing or disallowing these expenses of Rs.77,24,632/- in this year does not arise and accordingly, the assessee's ground of appeal can be dismissed.”

Therefore, adjudication of this ground No.4 becomes an academic exercise. Accordingly ground No. 4 is dismissed as academic in the assessment year 2011-12.”

8. He submitted that neither the Ld. CIT(A) nor the Assessing Officer has verified the details filed by the assessee on this issue and therefore, he has no objection if the matter is restored to the file of the Assessing Officer for verification and necessary adjudication.

9. The Ld. DR on the other hand, submitted that he has no objection if the matter is restored to the file of the Assessing Officer for verification.

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case disallowed the claim of brokerage charges of Rs.77,24,632/- out of the sale proceeds on the ground that

the long term capital itself was considered in assessment year 2010-11 and therefore, there is no question of allowing the brokerage charges for the impugned assessment year. We find the Ld. CIT(A) held that the assessee has withdrawn the above ground. He further held that since the said disallowance was confirmed by the then CIT(A) in assessment year 2010-11 and since the ITAT has not granted any relief to the assessee on this issue, therefore, the assessee shall not be eligible for any deduction on account of brokerage charges.

11. It is the submission of the Ld. Counsel for the assessee that the Tribunal has held that the capital gain is taxable in assessment year 2011-12 and with regard to the brokerage charges of Rs.77,24,632/- it has been held that this aspect becomes relevant for assessment year 2011-12 where gain becomes taxable as offered by the assessee. Thus, it is his submission that nowhere the claim of expenditure made by the assessee was verified by the lower authorities. We find some force in the above arguments of the Ld. Counsel for the assessee. Since the Tribunal in the instant case has held that the capital gains are taxable in assessment year 2011-12 and since the claim of brokerage charges has not been properly verified and adjudicated by either of the lower authorities i.e. Assessing Officer and CIT(A), therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the matter to the file of Assessing Officer with a direction to adjudicate the issue afresh as per fact and law after giving due

opportunity of being heard to the assessee. We hold accordingly. The ground No.1 raised by the assessee is allowed for statistical purposes.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 05th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated :05th June, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	29.05.2024		Sr. PS/PS
2	Draft placed before author	29.05.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			