

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 341/Ahd/2018  
Assessment Year 2014-15**

M/s. Sweetoo Apparels, Om Complex, Nr. Swastik Char Rasta, C.G. Road, Navrangpura, Ahmedabad  PAN: AAHFS1640K (Appellant)	Vs	The ACIT Circle-5(2), Ahmedabad  (Respondent)
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**Assessee Represented: None**  
**Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.**

Date of hearing : 27-06-2024  
Date of pronouncement : 05-07-2024

**आदेश/ORDER**

**PER : SIDDHARHTA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-5, Ahmedabad, in proceeding u/s 250 vide order dated 22/01/2018 passed for the Assessment Year 2014-15.

2. The assessee has taken following grounds of appeal:

*1. The Commissioner of Income-Tax (Appeals) - 5 (referred to as CIT (Appeals) erred in disallowing depreciation of Rs.3644750/- on land following the ratio of*

*M/s Alps Theatre 65 ITR 377 (SC) without appreciating the terms and conditions of the sale deed dated 28/4/2011 which clearly mentions in Note No 2 on page 17 of the sale deed as under:*

*"By the said Sale Deed the purchaser became owner of the shop only. The purchaser is entitled to use common amenities and common parking of said scheme as per the terms and conditions of the Sale Deed."*

*2. The CIT (Appeals) ought to have appreciated that the ratio of the Hon'ble Supreme Court in the case CIT v/s Alps Theater is applicable only in a case of absolute right of ownership and right of disposal attached to the land like independent bungalow and not to land comprised in multistory building in which the appellant purchased eight shops on ground floor and second floor.*

*3. The CIT (Appeals) ought to have appreciated that the ratio of Hon'ble Supreme Court in the case of CIT v/s. Alps Theatre 65 ITR 377 (SC) is applicable only in a case of absolute right of ownership and right of disposal attached to the land. In Multiplex Complex, the appellant cannot sell the 478 sq. mtrs. of land keeping structure of eight shops intact.*

*4. The CIT (Appeals) ought to have followed the ratio of Hon'ble Supreme Court in the case of CIT v/s. Gwalior Rayon Silk Mfg. Co. Ltd. 196 ITR 149 (SC) which has considered the ratio of CIT v/s. Alps Theatre 65 ITR 377 (SC) and distinguished the same observing that the ratio therein has no application but the principle laid down would be considered in the light of the purpose of the Act.*

*5. The CIT (Appeals) ought to have followed the ratios of Hon'ble Bombay High Court in the case of CIT v/s. Colour Chem Ltd. (1977) 196 ITR 323 which mentions that roads are used for the purpose of carrying raw materials, finished products and workers, and therefore, it must be regarded as building. It is submitted that land below shops is also used for the purpose of business and hence part of the building.*

*6. The CIT (Appeals) ought to have observed that Hon'ble Bombay High Court in the case of CIT v/s Colour Chem Ltd.106 ITR 323 has considered the ratio of Hon'ble Supreme Court in the case of CIT v/s Alps Theatre 65 ITR 377 (SC) and held that roads in factory premises are also part of the " Building" and hence depreciation is allowable on the cost of roads which is nothing but land.*

*7. The CIT (Appeals) erred in taking value of 478 sq. mtrs. of land at the rate of Rs.76,250/- per sq. mtr. and considered the value of the land at Rs.3,64,47,500/- despite the fact that the appellant has no absolute right of disposal of the said land and consequently disallowed depreciation of Rs.36,44,750/-.*

*8. The appellant craves for leave to add, amend or alter the time of hearing if the need arise.*

3. Before us, the assessee has sought adjournment on the ground that for the immediately preceding year A.Y. 2013-14, on similar facts, the assessee has filed appeal before Hon'ble High Court of Gujarat against order of Tribunal and the same is pending hearing before the Hon'ble High Court. Accordingly, since the subject matter is same for both the Assessment Years 2013-14 and 2014-15, the appeal of the assessee may be adjourned till the order of Hon'ble High Court of Gujarat for Assessment Year 2013-14.

4. We observe that the assessee has sought adjournment on a large number of occasions and again today the assessee sought adjournment on the ground that the matter may be deferred till the order of Hon'ble High Court of Gujarat is passed. However, we are not inclined to adjourn the mater on this ground any further. Accordingly, the adjournment application filed by the assessee is hereby dismissed and we shall proceed to proceed with the case on merits, in light of the material available on record.

5. At the outset, we observe that on identical set of fact (as also admitted by the assessee in its adjournment application), the ITAT Ahmedabad for the Assessment Year 2013-14 in assessee's own case had decided the issue against the assessee. It would be useful

to reproduce the relevant extracts of the ITAT ruling for A.Y. 2013-14 for ready reference:

2. *The assessee is engaged in the business of trading in readymade garments, hosiery and gift articles. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed depreciation @ 10% in respect of purchase of certain commercial area, in a building by the name of Turquoise, for Rs. 25,68,24,000/- on 28.04.2011. The Assessing Officer was of the view that since this purchase consideration includes element of price towards undivided share of plot on which building is constructed, to that extent depreciation is not admissible. As the assessee did not give any evidence in support of value of such undivided share in land, the Assessing Officer adopted the stamp duty valuation for such an undivided share in land, as reflected in the purchase deed, as value of undivided share in land at Rs. 3,64,47,500/-. Accordingly, depreciation in respect of this land was declined. Aggrieved by the resultant disallowance of Rs. 36,44,750/-, assessee carried the matter in appeal before the CIT(A) but without any success. While confirming the impugned disallowance, Ld. CIT(A) has observed as follows:-*

*“4.3 The AO has noticed that the assessee had purchased a building for an amount of Rs. 25,68,24,000/- and claimed depreciation amounting to Rs. 2,60,07,262/-. It is further noticed that the above amount of purchase also included the value of land where no depreciation is allowable. The AO has relied upon the decision in the case of Alps Theatre 65 ITR 377 (SC) where the Hon’ble Court has observed that the rate of depreciation is fixed on the nature of structure. The AO has further noticed that the assessee has failed to furnish any bifurcation with regard to the value of land. Accordingly, the AO has disallowed the depreciation of Rs. 36,44,750/- related to the land and added to the total income of the assessee.*

*4.4 During the appellate proceedings, the appellant has contended that the appellant has paid price of Rs. 25,68,24,000/- for purchase of built up area only for shops alongwith right to use common areas and amenities of the said building and not ownership right and only undivided proportionate land admeasuring 478 sqr. mtrs. It is further contended that definition of building is inclusive and it includes roads, bridges, culverts and tubewell below which always there is a land. The appellant has relied upon the decision of Supreme Court in the case of Gwalior Rayon Silk Manufacturing Co. 196 ITR 149. It is also contended that all the 8 shops are used for the purpose of business of readymade garments. It is further contended that in preceding years no such disallowance was made by the AO. It is further contended that the AO has disallowed the depreciation undivided portion of land of 478 sqr. mtrs. as if our firm is absolute owner of said land.*

*4.5 The facts of the case and the submissions are considered. The AO has disallowed depreciation on land claimed by the appellant on the ground that it is not allowable and relied upon the decision in the case of Alps Theatre. The appellant has mainly contended that the decision of Alps Theatre is applicable only in the case of absolute right of owner ship with a right to dispose of the same. The appellant has relied upon the decision in the case of Gwalior Rayon Silk Manufacturing Co. However, on perusal of the said judgment it is noticed that the facts of the said case are different from the facts of the instant case. The facts of the case of Alps Theatre are applicable to the facts of the case of the appellant. Therefore, the disallowance made by the AO is justified and accordingly the same is confirmed. Thus the grounds of appeal are dismissed.”*

*3. The assessee is not satisfied and is in further appeal before me.*

*4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

*5. I find that the issue in appeal is squarely covered against the assessee by Hon'ble Supreme Court's decision in the case of CIT vs. Alps Theatre [(1967) 65 ITR 377 (SC)] which holds that depreciation is not admissible in respect of land cost of which is embedded in the overall cost of building. Learned counsel, however, contends that this decision is not good law in view of the decision of Hon'ble Bombay High Court in the case of CIT vs. Colour Chem Ltd. [(1977) 106 ITR 323 (Bom)] which stands approved by Hon'ble Supreme Court in the judgment reported as CIT vs. Gwalior Rayon Silk Mfg. Co. Ltd. [(1992) 196 ITR 149 (SC)]. While on this plea, I can only refer to the following observations made by Hon'ble Bombay High Court in the above case:*

*“The Supreme Court decision on which Mr. Hajarnavis has relied is, in our view, clearly distinguishable on facts. In that case the depreciation was claimed not merely on the cost of erecting the building on the land but also on the cost of the land over which the construction had been put up and it was in that context that the Supreme Court held that the word "building" occurring in the relevant provision of section 10(2) of the Act meant "structure" and did not include the site. If, in the instant case, the cost of the land over which the roads had been laid out was sought to be included in the capital expenditure, the depreciation claimed by the assessee-company would have come within the ratio of the Supreme Court decision. As stated above, over the land which was in existence in the factory premises, roads or roadways were required to be laid out and for laying out such roads or roadways cost was incurred over which depreciation has been claimed. In our view, therefore, the instant case is entirely different from the facts that obtained in the Supreme Court case and, therefore, the ruling relied upon by Mr. Hajarnavis is clearly inapplicable.”*

6. *The question whether cost of roads will include value of land or not is not really relevant for our purposes. The decision of Alps Theatre (Supra) is clear and unambiguous, and directly on the issue. It is not open to us to act in defiance of the same. In the absence of any other material relied upon by the assessee, the Assessing Officer was justified in adopting stamp duty valuation as value of land. The CIT(A) rightly confirmed the action of the Assessing Officer on this point. I see no reasons to interfere in the matter.*

7. *In the result, the appeal is dismissed. Pronounced in the open court today on the 8<sup>th</sup> May, 2019.*

5.1. Accordingly, respectfully following the ruling of ITAT Ahmedabad on identical set of facts in assessee's own case for Assessment Year 2013-14, we are hereby dismissing the appeal of the assessee.

6. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the open court on 05-07-2024

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER** *True Copy*  
**Ahmedabad : Dated 05/07/2024**

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

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