

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI, JM &

SHRI OMKARESHWAR CHIDARA, AM

I.T.A. No.4162/Mum/2024

(Assessment Year: 2020-21)

Assistant Commissioner of Income Tax, 20(1) 3 rd Floor, Room No. 305, Piramal Chambers, Lalbaug, Lower Parel-400012.	Vs.	ALMAC Enterprises John Robert Compound, Sewree Fort Road, Sewree. Maharashtra- 400015. PAN: AAFA2410Q
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Anant N. Pai

Revenue / Respondent by : Shri Ram Krishn Kedia,
(SR. DR)

Date of Hearing : 03.10.2024

Date of Pronouncement : 30.10.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the revenue is against order dated 21/06/2024 passed by NFAC for assessment year 2020-21 on following grounds of appeal:

1. *“Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has not appreciated the facts of the case that the AO asked for documentary evidences regarding cost of improvement for property but the assessee not submitted any evidences.*



2. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has not appreciated the facts that the assessee has not submitted any documentary evidences regarding cost of improvement of plot no.1 on the addition made on account of long term capital gain of Rs.2,96,72,585/-.*
3. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has not appreciated the facts that the assessee has not submitted any documentary evidences regarding cost of improvement of plot no.2 on the addition made on account of long term capital gain of Rs.3,15,37,639/-.*
4. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred to allow index cost of improvement on the addition made on account of long term capital gain for plot no.1 and plot no.2, without calling remand report from the AO and appellant not applied additional evidence u/s. 46A of the IT Act before the CIT(A).*
5. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

Brief facts of the case are as under:

2. The assessee is in the business of providing storage facility and also undertakes the work of storage of goods. For the year under consideration assessee filed its return of income on 30/12/2020 declaring total income of Rs.02,99,160/-. The return was selected for scrutiny, and notice under section 143(2) of the act along with 142 (1) of the act were issued. In response to the notices the assessee provided details/explanation/documents as called for from time to time.

2.1. During the assessment proceedings the Ld.AR noted that, the assessee sold immovable property situated at number 1, Block-F, sector 12, Gandhidham Kutch on 18/03/2024, for total consideration of ₹14,75,00,000/-. It was noted that, the assessee



shown capital gain of Rs.9,03,87,746/- against the sale of property and claimed cost of selling being, brokerage of Rs.14,15,000/- and index cost of improvement of ₹2,96,72,585/-.

2.2. The Ld. AO called upon assessee to provide details of the cost of improvement and brokerage paid along with supporting evidence. In compliance to show cause notice, the assessee furnished calculation of capital gain without any documentary evidences regarding brokerage paid and cost of improvement. As the same could not be verified, the Ld.AO recalculated capital gains by reducing the cost of improvement and the brokerage paid by the assessee.

Aggrieved by the order of the Ld. AO, assessee preferred before the Ld. CIT(A).

3. Before the Ld. CIT(A) it was submitted that, the property sold was acquired by assessee before 01/04/2001 and these were purchased for warehousing purposes. It was submitted that the warehouses and tanks consolidated by the assessee on the plots in Gandhidham has done during 1990 to 1996 and further additions/improvements was carried out over a period of 20 years. The assessee also furnished year-wise construction details page 149-150 of the paper book. For sake of convenience the same is extracted herein below:



Description of property	Date of Purchase	Financial Year Improvement	Cost of Improvement	Nature of Improvement
Plot No 2	21/03/1990	2002-03	6,85,215	Construction of Godown No. 15 Exit
		2007-08	12,50,103	Reconstruction of Godown No. 9
		2009-10	18,33,511	Reconstruction of Godown No.1 to No.3
		2013-14	1,43,85,330	Construction cost of Tank No. 5 t No. 11
		2014-15	29,55,371	Construction cost of Tank No. 12 to No. 13
		2016-17	6,65,187	Construction of Tank Shed
		2018-19	84,016	Reconstruction of Tank No. 5 to No. 11
		Total	2,18,58,733	

Description of property	Date of Purchase	Financial Year Improvement	Cost of Improvement	Nature of Improvement
Plot No 1	26/03/1996	2001-02	30,85,035	Construction of Godown No. 16 to No. 20
		2002-03	48,72,274	Construction of Godown No. 19 to No. 22
		2004-5	7,53,419	construction of Godown No.23 to No.24
		2014-15	5,19,420	Repairs to Godown No.1 to No. 15
		2016-17	16,50,035	Major Repairs to



				Godown No. 16 to No. 20
		2017-18	23,02,872	Major Repairs to Godown No. 16 to No. 20
		2018-19	5,32,587	Major Repairs to Godown No. 16 to No. 20
		Total	1,37,12,642	

3.1. It was submitted that the assessee kept on making additions in the form of improvements to the said properties from year to year to increase the area of the property which could be rented out. The Ld.AR submitted that all the improvements were made by the assessee over a period of 18 years and hence the supporting documents in respect of the same are voluminous. It was submitted that, the cost incurred on the improvements from year to year were duly audited by the auditors of the assessee and was very much part of the audited accounts that formed part of the return of income.

3.2. It was submitted that, all the submissions were filed before the Ld. AO but the assessee not submit the evidences in respect of the cost of improvement brokerage. It is submitted by the Ld.AR that the assessing officer never disputed the additions made in the preceding years. It is submitted by the Ld.AR that, the assessee had earned income from the warehousing business through these godowns, and that the earned income offered to tax under the head income from house property from year to year. And therefore the



cost of improvement claimed by the assessee for the purpose of indexation while computing capital gains cannot be denied. In support he placed reliance on following decisions of this *Tribunal*:

“4. In the ITAT Jaipur Bench in the case of *Mathur Lal v. Income Tax Officer, Ward 2(2) Kota*

5. In the ITAT Chennai Bench 'B' in the case of *Mohamed Ibrahim v. Income Tax Officer (International Taxation)*”

3.3. The Ld.AR submitted that Ld.CIT(A) appreciated the evidences filed and allowed the claim of assessee. He thus relied on the observations of the Ld.CIT(A).

3.4. On the contrary, the Ld.DR though vehemently opposed the submissions of the assessee argued that unless the expenditure claimed by the assessee is not verified, the claim cannot be allowed. He has supported the order passed by the Ld. AO.

We have perused the submissions advanced by both sides in light of records placed before us.

4. At the time of hearing, considering the fact that the addition/improvements were made to the warehouses and tanks constructed by the assessee on the plots purchased by it were made over a period of 20 years, the Ld.AR was directed to furnish details of cost incurred towards improvement/renovation in the immediately passed for assessment years. The Ld.AR furnished paper book number 3, wherein details of invoices carried out by the assessee are placed.



4.1. It is pertinent to note that every year assessee declared income from house property considering the income generated from the warehousing business and standard deduction has been claimed against cost incurred towards improvement/addition which was never questioned or doubted by the authorities. The assessment order passed for assessment years 2001-02 to 2013-14 has been placed on record in Paper Book No.2. It is noted that for assessment year 2007-08 to 2009-10, the assessment was reopened. Thereafter every year the expenditure claimed by the assessee against the income offered was subjected to scrutiny. Further it is noted that, the additions to the property was part of books of account which stood accepted by the authorities as there is no proceedings initiated for these years under any other provisions.

4.2. For the year under consideration, merely because the assessee has not provided all the invoices and the evidences to establish the cost incurred by the assessee over the period of 20 years, will not vitiate the claim of the assessee. On test check basis, it is noted from invoices filed before us for that assessment years 2014-15 to 2018-19 *vis-à-vis* the balance sheet, the assessee has accounted for the expenditures incurred by it in all the preceding assessment years. It is noted that, the preceding assessment years were subjected to scrutiny assessment and no error is found by the Ld.AO in respect of the income declared by the assessee under the head Income from House Property.



However those assessment years to which the invoices are available with the assessee the same is to be produced before the authorities below for necessary verification.

We accordingly remand the issue to the Ld.AO with the direction to verify expenses to the extent of which the assessee is able to provide the documents. Beyond the assessment years in respect of which the evidences are not available with the assessee, may not be questioned and maybe accepted to have been properly incurred. The Ld.AO is directed to carry out necessary verification and consider the claim of assessee in accordance with law.

Accordingly the grounds raised by the revenue stands partly allowed for statistical purposes.

In the result the appeal filed by the revenue stands partly allowed for statistical purposes.

Order pronounced in the open court on 30-10-2024.

Sd/-
(OMKARESHWAR CHIDARA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

30.10.2024

*SK, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT



BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai