

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. Nos. 1160 & 1161/Ahd/2024
(Assessment Year: 2011-12)

Bhagabhai Tribhovandas Patel, 9, Datt Bungalow, Nr. R.C. Technical School, Ghatlodia, Ahmedabad-380051 PAN : ABJPP 9380 J	Vs.	Income Tax Officer, Ward - 4(2)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri S.N. Divetia, AR & Shri Samir Vora, AR
Respondent by:	Shri Dharnidas V.S., Sr DR

Date of Hearing	21.11.2024
Date of Pronouncement	22.11.2024

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

These two appeals have been filed by the Assessee, one against the order passed by the Ld. Commissioner of income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "CIT(A)" for short) dated 10.04.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short] in quantum proceedings u/s 143(3) r.w.s. 263 of the Act and other against the order of ld. CIT(A) dated 15.04.2024 passed in penalty proceedings u/s 271(1)(c) of the Act for Assessment Year (AY) 2011-12.

ITA No. 1160/Ahd/2024

2. The Assessee has taken following grounds of appeal:-

"1. The order passed u/s 143(3) r.w.s. 147 on 30.03.2015 for AY 2010-11 by ITO, Ward 6(1)(1), Abad, making additions/disallowances of Rs.11,22,506/- is wholly illegal, unlawful and against the principles of natural justice.

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2. *The Id. AO has grievously erred in law and or on facts in not considering fully properly the explanations furnished and the evidence produced by the appellant.*

3. *The Commissioner of appeal has confirmed the addition of Rs.2,44,553/-, the cost of improvement which is to be deleted. As the Commissioner of appeal also has not taken into consideration reply and evidence given to them.*

4. *The Commissioner of appeal has confirmed the addition of Rs.78,030/- out of total other expenses Rs.2,60,103/ without any base, the same disallowed expenses may be deleted."*

3. In this case order under Section 143(3) r.w.s. 263 of the Act has been passed by the Assessing Officer on 12.12.2018 for the Assessment Year 2011-12 making disallowance of cost of improvement of Rs. 2,44,553/- and rejection of other expenses @ 30% being Rs. 78,030/-. The Id. CIT (A) rejected the contention of the Assessee and affirmed the disallowances made by the Assessing Officer. Before us, the Assessee submitted that the cost of improvement of Rs. 2,44,553/- has been spent on the property namely Shanti Arcade after taking the possession of the property to make the property livable during the year 2007 itself. The Id. Counsel for the Assessee has also taken us through the ledger account which has been submitted before the Assessing Officer during the assessment proceedings and argued that the expenses have been incurred rightly, hence the same needs to be allowed.

4. With regard to the disallowance of 30% of expenses, the Id. Counsel for the assessee submitted that all the relevant details such as ledger account of the conveyance, electricity, municipal tax, accounts fee, repairs, maintenance, stationery, tea expenses and other miscellaneous expenses have been duly submitted before the Revenue Authorities and hence disallowing 30% of the expenses is against the settled principles of the law.

5. On the other hand, the Id. DR argued that the Assessee, though submitted that he has spent the amount of Rs. 2.44 lakhs on cost of improvement but no details of cost of improvement have been submitted, hence the same has been rightly disallowed by the Revenue Authorities. With regard to the miscellaneous expenses disallowed, the Id. DR argued that in the absence of complete vouchers and details, the Assessing Officer has rightly disallowed the expenses at the rate of 30% instead of disallowing the entire amount.

6. Heard the arguments of both the parties and perused the record before us.

7. With regard to the cost of improvement, we find that the cost of improvement was incurred to make the house livable during the year 2007 itself. The sources of the cost of improvement have not been questioned and the Revenue Authorities disallowed the cost of improvement only on the ground that the expenses incurred were revenue in nature so cannot be considered as capital expenditure. We find that the issue of capital expenditure/revenue expenditure is not to be considered at this juncture and the cost of improvement incurred to make the house livable in the year 2007 can be genuinely considered to be cost of improvement which is eligible for deduction from the capital gains. The appeal of the Assessee on this ground is allowed.

8. With regard to the disallowance of 30% of expenses on the amount of Rs. 2.6 lakhs, we find that the Assessee has submitted the entire details such as municipal tax, accounts fee, repairs, maintenance & miscellaneous expenses. All the due and relevant details have been submitted before the Assessing Officer and Assessing Officer has also not brought on record

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details of any expenses which cannot be allowed. The only grievance of the Assessing Officer was that the Assessee did not give the bifurcation of these expenses. However, we find that all the heads of expenses have been duly furnished and there was no reason to disallow 30% of the expenses on ad-hoc basis. Hence, the appeal of the Assessee on this ground is liable to be allowed.

In the result, appeal of the assessee is hereby allowed.

ITA No. 1161/Ahd/2024

9. Since the additions made in the quantum appeal have already been deleted by the above order, the penalty levied in respect of such additions cannot survive. Therefore, the impugned penalty levied u/s 271(1)(c) of the Act is hereby deleted.

10. In the result, both appeals of the Assessee are allowed.

The order is pronounced in the open Court on 22.11.2024

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

btk

आदेश की प्रतिलिपि □ ग्रेषित / 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 प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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